



SUPERFUND  
ADMINISTRATIVE  
REFORMS  
ANNUAL REPORT  
FISCAL YEAR 1996

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## **MAJOR ACCOMPLISHMENTS**

### ***Fundamentally Different: How EPA Has Changed Implementation of the Superfund Program***

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#### **INTRODUCTION**

For several years, EPA has been reforming the Superfund program to make it work faster, fairer, and more efficiently. While EPA has been working with Congress to make legislative changes, it also has fundamentally changed the program by implementing a series of far-reaching reforms.

These changes have improved the functioning of a program that addresses thousands of abandoned sites throughout the country. Chemical and radioactive wastes at such sites threaten nearly 70 million Americans – including more than 10 million children – who live within four miles of a Superfund site.

The highlights of EPA's comprehensive effort to restructure Superfund are summarized below. A more detailed description of the status of EPA's reform effort is provided in the attached Annual Report.

#### **THE SUPERFUND PROGRAM TODAY**

The collection of initiatives known as "Superfund reforms" has produced basic, permanent changes in the Superfund program, ranging from national programmatic changes to changes impacting individual sites at every stage of the cleanup and enforcement processes. Reforming Superfund has been a continuous process – EPA piloted changes, learned from them, and, where they were successful, made them part of the program. EPA developed these reforms after consideration of the differing perspectives of the various stakeholders in the Superfund process. By listening and responding to these perspectives, changes have been made to the Superfund process that speed it up, reduce costs, and make it fairer. These changes affect the entire process – stretching from the very beginning (when a site is first assessed), to the very end (when construction is completed and any enforcement is concluded).

As a result of Superfund reform, EPA's internal decision-making processes make more sense. The Agency has taken a number of steps to ensure that Federal Superfund resources and protections are focused in the right places. The Agency is prioritizing

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cleanups so that the sites posing the worst environmental and health problems are addressed first. EPA is deleting cleaned up portions of sites from the National Priorities List (NPL) instead of waiting for the whole site to be cleaned up so that these sites will not suffer from any limitations imposed by identification as a Superfund site. EPA deleted over 27,000 sites from its inventory of all potential hazardous waste sites in instances where no further response activity is planned for the site. EPA also will encourage comparable State voluntary programs to handle sites that do not rise to the level of Federal attention.

When a site does merit a Federal response, the process for selecting the response is faster and less costly. When determining the risk posed by the site, EPA incorporates the most recent information and reasonable assumptions in its risk-based and remedial decisions. Assumptions regarding current and future land use are developed in conjunction with the affected community. After determining the risk posed by the site, EPA must consider various remedies to address the risk. In conjunction with States and communities, EPA is coordinating the selection of better, more cost-effective remedies. Where EPA has accumulated a body of experience in addressing a particular type of site, it has identified standardized remedies known as “presumptive remedies” to eliminate the need for costly studies and processes that are likely to yield the same choices.

In selecting the right remedy for a particular site, EPA clarified the role that cost plays in affecting that decision. To ensure that costs are given an appropriate role in remedy selection, EPA established a panel of national experts to review high cost remedies. Where a remedy selected in the past may merit reconsideration based on new technological developments, EPA is revising these remedies to ensure that the most cost-effective remedies are considered. The Agency’s track record on future cost reductions at every step of the way is remarkable – money is being saved by reviewing remedy selection, updating remedy decisions, applying presumptive remedies, and implementing remedies selected with community participation. Just from the initial implementation of these most recent reforms alone, over \$400 million in reduced future cleanup costs will be achieved.

The enforcement process has also been transformed into a fairer process that results in reduced transaction costs. EPA continues to emphasize “Enforcement First” – using its enforcement authority to assure that viable private parties that created hazardous wastes are held responsible for cleaning them up, so that the Superfund is reserved for truly “orphaned” sites. More than 70% of long-term cleanup actions are now financed by responsible parties. EPA’s implementation of this approach, however, has included efforts to enhance equitable treatment for all parties. EPA does not pursue parties whose contribution of waste to the site is extremely small, since the transaction costs these parties would incur in defending themselves would easily exceed whatever minimal contribution they may be expected to make. Parties with slightly larger contributions (known as *de minimis* parties) are routinely offered cashout settlements early in the

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process to limit their transaction costs and give them the assurance of being protected from any further involvement at the site. Over 14,000 of these parties have taken advantage of these settlement opportunities to date.

The remaining parties, who bear a larger burden of responsibility at these sites, have also benefited from the enforcement reforms. Where there are parties that are no longer in business or without assets, EPA provides compensation for a portion of those parties' share at sites where the remaining parties agree to perform the work. This past year, EPA offered to compromise over \$57 million at various sites to increase fairness for those parties agreeing to perform cleanups. To reduce the transaction costs that are often incurred where parties cannot agree on what share each party should bear, EPA is testing an allocation process where a neutral party determines each party's share of responsibility and EPA offers settlements to parties based on that allocation. Although these test cases have not been concluded, the Agency has already learned valuable lessons that are already impacting its enforcement process. In addition, EPA has established and utilized interest-bearing "special accounts" to ensure that settlement funds are dedicated for use in achieving cleanup at a specific site. Lastly, where potentially responsible parties (PRPs) have demonstrated their capability and cooperativeness in performing site cleanup, EPA will significantly reduce oversight, and thereby reduce the costs of cleanups, for cooperative responsible parties.

Superfund reforms also have focused the Agency's attention on promoting redevelopment of abandoned and contaminated properties across the country. The Agency has aggressively pursued policies to promote sensible redevelopment of "Brownfields" – those abandoned, idled, or under-used industrial and commercial areas across the country where expansion or redevelopment is complicated by real or perceived environmental contamination. EPA is providing grant money to 76 communities to develop strategies to revitalize local brownfield sites. EPA is stimulating the purchase of property for redevelopment by expanding the opportunity for more agreements promising not to sue those purchasers for any contamination present at the time of purchase. For many parties who may own property that is part of a Superfund site (but they have very little, if any, link to the contamination) EPA stated its intention not to pursue these types of parties. For example, EPA issued policies describing the circumstances under which it will not take enforcement actions for cleanup work or costs against various parties, such as residential homeowners. EPA has had great success restoring contaminated residential properties, working with homeowners to remove contaminants frequently found in residential areas. Additionally, in a recent study of how sites were being re-used, EPA found that of the first 191 construction completion sites, 80 were already in economic reuse in 1995 and 44 additional sites are in some non-economic reuse (*e.g.*, floodplains, wetlands, green space, permanent waste management). These are just a few of the highlights of EPA's extensive Brownfields initiative.



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The rest of this document elaborates on this “thumbnail” portrait of how reforms have changed the Superfund program. Only highlights are furnished, since more extensive details are set forth in the Annual Report itself.

## **MORE EFFICIENT CLEANUPS**

### ***Setting Priorities for Cleanups***

To ensure that available funds are directed to the highest priority response projects on a *national* basis, EPA established a National Risk-Based Priority Panel (Panel) in August 1995. Prior to this reform, individual Regions established the relative priority of their cleanup projects which were then funded on a first-come, first-served basis. This reform established a national priority system to fund cleanups based on the principle of “worst problems first.” The Panel evaluates proposed cleanup actions, looking at the following factors: risks to humans and the ecology; stability and characteristics of contaminants; and economic, social and program management considerations. With the exception of emergencies and the most critical removal actions, cleanup projects are generally funded in order of priority based on the recommendations of the Panel. By early 1997, the panel had ranked projects approaching \$1 billion in cleanup costs.

### ***Getting PRPs “Into the Act”***

High quality risk assessments can often be performed faster and cheaper by PRPs under EPA’s supervision, saving taxpayer money and accelerating the pace of cleanup. In January 1996, EPA issued a directive encouraging the performance of Superfund site risk assessments by PRPs in appropriate cases. Eight Regions have now identified Superfund sites for PRP-led risk assessments.

## **FASTER CLEANUPS**

In FY92, EPA established a goal of achieving 395 toxic waste cleanups (or construction completions) at NPL sites by the end of FY96. On October 15, 1996, the Administrator announced the completion of 410 Superfund toxic waste site cleanups. EPA has set a record pace for cleaning up Superfund sites – cleaning up more toxic waste sites in the past three-and-a-half years than were completed in the previous 12 years of the Superfund program. At the Lord-Shope Landfill near Erie, Pennsylvania (the 400th site to be cleaned up) parties used innovative technology to remove contaminants. Tons of industrial wastes had been dumped over 20 years (including debris, rubber scrap, organic and inorganic chemicals, solvents, cooling acids, and caustic agents) that resulted in ground water contamination. Today, the worries of the community are at an end. No longer do they

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need to be concerned about the safety of drinking water, the impact on farmland near the site, the effect on property values of their homes and businesses, and the possibility of children wandering onto the site and playing among the drums of toxic chemicals.

EPA (with the support of the Corps of Engineers and the Bureau of Reclamation and their cleanup contractors) also has implemented reforms which streamlined its rapid action cleanup authority. EPA's Superfund Accelerated Cleanups Model (SACM) accelerates cleanup and risk reduction at sites by consolidating site-assessment into a one-step process. SACM includes the following initiatives: taking early actions while assessing long-term cleanup; using "presumptive" remedies where appropriate; initiating enforcement activities earlier; and addressing the worst threats to people and the environment first. SACM reduces cleanup time through a single, continuous site assessment and early action process. EPA has now completed over 3,800 removal actions, including the more recent SACM removals, at over 2,900 Superfund sites, thereby removing significant threats to public health and the environment. At the Southern Shipbuilding Corporation Superfund Site in Slidell, Louisiana, EPA conducted several emergency actions to prevent the catastrophic release of hazardous materials into Bayou Bonfua. Through an accelerated combination of waste incineration, removal actions, and investigations, EPA rapidly reduced human health and environmental risks, and ensured that a site which was once a threat to downstream properties is now available for future development.

### *Choosing the Right Remedy*

The Agency is saving time and money by using standardized or "presumptive" remedies for certain types of sites. Presumptive remedies are based on scientific and engineering analyses performed at similar Superfund sites and are used to eliminate duplication of effort, facilitate site characterization, and simplify analysis of cleanup options. EPA issued presumptive remedy guidances for the following: municipal landfill sites; sites with volatile organic compounds in soil; wood treater sites (with an update two years later); and a ground water presumptive response strategy. Regions are reporting significant reductions in costs and time required to complete remedies. A recent Office of Inspector General report focused on an independent review of the use of a presumptive remedy and concluded that "Use of a *Presumptive Remedy* increased consistency in decision making by taking advantage of lessons learned at similar sites, and allowed speedup of the Feasibility Study process."

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## **REDUCING REMEDY COSTS**

### ***Taking a Second Look***

Taking a second look at remedies is creating substantial future cost reductions for parties at complex, high cost Superfund sites across the country. The EPA's newly established National Remedy Review Board is reviewing high-cost cleanup plans prior to final remedy selection. Overall, the Board's preliminary analysis indicates potential reductions in the range of \$15-30 million in total estimated future costs for reviews completed during FY96.

### ***Clarifying the Role of Cost in the Remedy Selection Process***

Through a recently issued fact sheet, EPA summarized information on the role of cost in the Superfund program which was, prior to this point, scattered in guidance, statutes, and regulations. EPA's aim is to ensure that all stakeholders involved in the Superfund process fully understand the important role of cost in remedy selection under both existing law and policy and in recent initiatives aimed at enhancing the cost-effectiveness of remedial actions.

### ***Using Technology and Science Updates to Save Money***

Approximately \$280 million in future cost reductions are predicted as a result of the Agency's review and update of earlier remedy decisions. Many remedy selection decisions now in place were made in the early years of the Superfund program and were based on "state-of-the-knowledge-and-practice" available at the time. Where science and technology have advanced and adequate levels of public health and environmental protection are assured, EPA is revising remedies where future cost reductions can be achieved while still maintaining appropriate levels of protection.

## **BETTER LAND USE ASSUMPTIONS IN REMEDY SELECTION**

EPA has improved its cleanup decisions by more routinely using reasonable assumptions about current and future land use. Recognizing that land may be appropriate for industrial uses, rather than residential uses, can yield a more realistic risk assessment and more cost-effective remedy selection. EPA is reaching out to local land use planning authorities, other government officials and the public as early as possible during site investigation to discuss land use issues. EPA also is making extra efforts to reach out to communities which may have environmental justice concerns to ensure that they are fully

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informed and able to participate in these decisions. Currently, only 38% of EPA's Records of Decision (RODs) include residential land use scenarios, typically where there is residential land use on-site or adjacent to the site.

## **PROMOTING ECONOMIC REDEVELOPMENT**

EPA is promoting redevelopment of abandoned and contaminated properties across the country that were once used for industrial and commercial purposes ("brownfields"). EPA believes that environmental cleanup is a building block, not a stumbling block, to economic development and that revitalizing contaminated property must go hand-in-hand with bringing life and economic vitality back to communities. EPA's Brownfields Economic Redevelopment Initiative places a new focus on brownfields. The Brownfields reforms are directed toward empowering States, communities, and others to work together to assess, safely clean up, and sustainably reuse these sites. EPA efforts are being accomplished through the Brownfields Action Agenda – an outline of specific actions the Agency is conducting.

### ***Brownfields Pilots are Encouraging Redevelopment***

The Brownfields Assessment Pilots form a major component of the Brownfields Action Agenda. EPA exceeded its commitment to fund at least 50 pilots by actually funding 76 pilots at up to \$200,000 each by the end of 1996. These two-year pilots are intended to generate further interest in Brownfields redevelopment by bringing together public and private efforts including Federal, State, and local governments. The Brownfield pilots will develop information and strategies that promote a unified approach to site assessment, environmental cleanup, and redevelopment. Many different communities are participating, ranging from small towns to large cities. Stakeholders tell the Agency that Brownfields development activities could not have occurred in the absence of EPA efforts. As the National Community Reinvestment Coalition (NCRC) said "[W]e wholeheartedly support the EPA's Brownfields Economic Redevelopment Initiative. NCRC believes that [EPA's] multifaceted initiative represents a significant step forward by the Administration in working with distressed communities on the local level in their revitalization efforts."

### ***Getting Sites off the "List"***

Prior to reform, EPA kept track of all potential hazardous waste sites in an inventory known as the Comprehensive Environmental Response and Liability Information System (CERCLIS). Even sites where no further Federal Superfund interest was warranted remained in the CERCLIS inventory. This practice led to unintended barriers to the redevelopment of these properties because sites listed in CERCLIS could be automatically

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considered risky by some lenders, making it difficult for potential purchasers to secure loans to develop these properties. To avoid this result, EPA redefined CERCLIS, deleting or archiving sites from the active CERCLIS inventory. EPA has archived over 27,000 sites (*e.g.*, sites where ‘no further remedial action [is] planned’) from CERCLIS to date, and EPA expects to archive over 1,000 additional sites from CERCLIS per year over the next several years.

### ***Removing Redevelopment Barriers Based on Liability Concerns***

EPA is promoting redevelopment of contaminated properties by protecting prospective purchasers, lenders, and property owners from Superfund liability. EPA’s “prospective purchaser” policy is stimulating the development of sites where parties otherwise may have been reluctant to take action by clarifying (through agreements known as “prospective purchaser agreements”) that bona fide prospective purchasers will not be responsible for cleaning up sites where they did not contribute to or worsen contamination. EPA issued new guidance in May 1995, which allowed the Agency greater flexibility in entering into such agreements. The new guidance expanded the universe of sites eligible for such agreements to include instances where there is a substantial benefit to the community in terms of cleanup, creation of jobs, or development of property. Of the 45 agreements to date, over 50% have been reached since issuance of the May 1995 guidance. At the Indiana Woodtreating Site near Bloomington, Indiana, the work performed under a prospective purchaser agreement will prevent contaminants from entering Clear Creek, which is a drinking water source for the City of Bloomington, Indiana.

People owning property under which hazardous substances have migrated through ground water also feared liability under the statute. EPA responded by announcing that it will not take enforcement actions under CERCLA against owners of property situated above contaminants which have migrated in ground water, but where the property is not also a source of contamination. Further, EPA also will consider providing protection to such property owners from third party lawsuits through a settlement that affords contribution protection.

EPA gave reassurance to the lending industry and to government entities acquiring property involuntarily. EPA outlined in guidance what it considered appropriate actions a lender may undertake without becoming a liable party. In September 1996, Congress passed an amendment very similar to EPA policy and guidance on lenders. EPA also is providing assurances (“comfort/status letters”) in appropriate circumstances to new owners, lenders, or developers that they need not fear incurring Federal environmental liability.

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## INVOLVING AND INFORMING COMMUNITIES

### *Communities Getting Involved in Remedy Selection*

EPA is promoting “consensus-based” approaches to the remedy selection process by involving community stakeholders in pilots. This effort is intended to empower local citizens and other stakeholders to achieve mutually acceptable remedies that meet statutory and regulatory requirements and, of course, make common sense. At the Lower East Fork Poplar Creek Site in Oak Ridge, Tennessee, the cleanup strategy that was agreed to in August 1995 reflected the voice of the local community in the remedy selection process. This included input into a change in cleanup goals. Through a citizens working group established by the Department of Energy working in partnership with EPA and the State of Tennessee, the citizens’ influence on the remedy selection decision saved over \$100 million and helped protect human health and the environment more quickly.

### *Giving Stakeholders a Voice*

EPA established an Ombudsman in every Region to serve as a direct point of contact for stakeholders to address their concerns under Superfund. Prior to this reform, stakeholders worked out concerns with Regional personnel, but had no formal mechanism for having their issues facilitated further. The Ombudsmen now serve as facilitators for stakeholders on concerns that have not been resolved between Regional personnel and the stakeholder through informal means. The Ombudsman reports to a top Regional management official in every Region to assure management attention to issues raised.

### *Improving Public Access to Superfund Information*

EPA recognized that improving communication with stakeholders and improving access to Superfund information will help the public become more aware of, and informed about, Superfund. EPA is using electronic tools to improve communication, including having sites for both the Office of Emergency and Remedial Response (OERR) and the Office of Site Remediation Enforcement (OSRE) on the Internet, with separate pages devoted to Superfund reform. Each Region also is developing home pages which will include information on Regional Superfund programs, such as Superfund site lists, site-specific information, successful site cleanup actions, and links to State Superfund activities.

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## GETTING STATES AND TRIBAL GOVERNMENTS ‘INTO THE ACT’

### *State Programs Speed Cleanup of Non-NPL Sites*

EPA recognizes the important role that State environmental agencies have in encouraging economic redevelopment of brownfields. EPA plans to provide \$10 million, earmarked in FY97 appropriations, to encourage the development or enhancement of State programs that encourage private parties to voluntarily undertake protective cleanups of less seriously contaminated sites. EPA issued a memorandum setting out an interim approach for its relations with State voluntary cleanup programs. The memorandum includes criteria for State voluntary cleanup programs that are enabling EPA and the States to start negotiating a division of labor between EPA and the States in memoranda of agreement (MOAs). Even before these criteria were set out, eight States worked out MOAs with EPA regarding sites cleaned up under voluntary cleanup programs.

### *Greater Power for States in Picking Remedies*

EPA is sharing its authority to select remedies with qualified States and Tribes and to decide which sites to list on the NPL. States selected for this reform enter into agreements through which they conduct the remedy selection process, consistent with applicable law and regulations. Participating States supervise the entire remedy selection process with minimal EPA oversight or involvement, giving the State significantly more control than usual over NPL site cleanups.

## MAKING THE LIABILITY SYSTEM WORK BETTER

A core principle of the Superfund program is that the cost of cleaning up toxic waste sites should be borne by the parties responsible for disposing of the waste. EPA’s “Enforcement First” strategy has assured that responsible parties perform or pay for more than 70% of long-term cleanups, thereby conserving the Superfund trust fund for cleaning up sites for which no viable responsible parties can be identified.

At the same time, EPA has reformed the way it administers the Superfund liability program to encourage parties to settle, rather than to litigate, and to enhance the fairness and equity of settlements.

### *Testing Alternatives*

EPA is conducting pilots that test a fundamentally different approach to the allocation of Superfund costs (called the allocations pilots). Under this approach, PRPs may settle their liability based upon their share of cleanup costs. A neutral party known as an allocator,

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selected by parties to the process, conducts an out-of-court allocation. The allocator assigns shares of responsibility for cleanup costs among all PRPs at a site. Under this scheme, EPA expects to pay the “orphan share,” which includes the shares of parties which are defunct or insolvent. To date, EPA has offered allocation pilots at 12 Superfund sites. The pilots have been useful in identifying problems and have indicated the need for flexibility to meet site-specific circumstances. Other lessons regarding the pilots are set out in more detail in the accompanying Annual Report.

### ***Recognizing the Orphan Share***

Through implementation of its 1996 “orphan share compensation” policy, EPA is encouraging responsible parties to agree to perform cleanups and is enhancing the fairness of settlements. Without a settlement, responsible parties at a site are potentially liable under the Superfund law for the entire cost of the cleanup, including the share that might be attributable to other parties that are insolvent or defunct. Under the new orphan share compensation guidance, however, EPA has offered, and will offer, to forgive a portion of its past costs and projected future oversight costs in cleanup settlements to cover some or all of the orphan share at the site. This creates a major incentive for responsible parties to agree to perform the cleanup without litigation, and reduces transaction costs by addressing arguments over who should bear the burden of the orphan shares. This compromise is in addition to any other compromises that may be reached because of other factors. In FY96, the Agency offered to compromise over \$57 million in orphan share compensation to potential settling parties at 24 sites across the United States.

### ***Getting Parties Out Early***

EPA’s reforms are getting thousands of small volume waste contributors out of the liability system. PRPs that are liable for cleanup costs have sometimes sued huge numbers of smaller companies that had little or no connection to the toxic contamination – sometimes simply by naming every business in the local yellow pages as a defendant in a contribution lawsuit. EPA’s reforms have responded to the burden this can place on parties that made a very limited contribution to the pollution at a site by using its settlement authority to get small waste contributors out of Superfund litigation. To date, the government completed settlements with over 14,000 small volume contributors of hazardous waste at hundreds of Superfund sites. These settlements protect the settling parties from burdensome private contribution suits. In addition, EPA has stepped in to prevent the big polluters from dragging untold numbers of the smallest “de micromis” contributors of waste into contribution litigation by publicly offering to any such party \$0 settlements that would preclude lawsuits by other PRPs.



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### ***Reducing Costs for PRPs Through Reduced Oversight***

PRPs incur costs at sites in part because of EPA's need to oversee the quality of the work they are doing. Oversight is the process EPA uses to ensure that all studies and work performed by PRPs are technically sound and comply with the statute, regulations, guidances, policies, and the signed settlement agreement. Oversight may include submission of reports for approval, meeting interim milestones, or the scheduling of field visits. As the Superfund program matures, parties performing work at sites have developed a considerable body of experience in conducting response activities at sites. EPA can reduce oversight of such parties while continuing to exercise sufficient oversight to ensure that the work is performed properly and in a timely manner.

Already, EPA Regions have initially identified approximately 100 sites where reductions in oversight of ongoing work for cooperative and capable PRPs have occurred or will occur – significantly reducing costs at some of these sites. EPA also may look at opportunities to involve communities in deciding the appropriate level of PRP oversight.

### **How It Adds Up**

These are just the highlights. Over the past four years, EPA's reform effort has included implementing well over 50 initiatives in its determination to reform the Superfund program. A very few of the initiatives have ended or will end because they were pilots that EPA has used to test alternative ways of doing business and learn what might work best. Most are permanent and fundamental changes to make the Superfund program faster, fairer, and more efficient. EPA is committed to solidifying and building on these changes to continue to run the Superfund program better.

**SUPERFUND REFORMS ANNUAL REPORT FISCAL YEAR 1996**  
**SUMMARY OF STATUS AND NEXT STEPS, ROUND 3**

Administrative Reform	Status	Next Steps
<b>1a. Establish National Remedy Review Board</b>	<p>All Regions and eight other Agency offices have designated representatives to the National Remedy Review Board (NRRB). The RRB has reviewed 12 proposed decisions at 11 sites. Of the 12, five have progressed to "final ROD," and one to "proposed plan." As a result of these six reviews, the Agency expects to realize future cost reductions of approximately \$8 million. Overall, the Board's preliminary analysis indicates potential reductions in the range of \$15 million to \$30 million in total estimated site cleanup costs.</p>	<p>As of October 10, 1996, the RRB estimates there may be as many as 10-20 decisions reviewed in FY97.</p>
<b>1b. Establish New Remedy Selection Management Flags ("Rules-of-Thumb")</b>	<p>EPA developed two fact sheets that were sent out for review by EPA Regional Offices, other Federal agencies, and State environmental agencies in August 1996. The first fact sheet describes remedy selection rules-of-thumb, or key principles and expectations, corresponding to three policy areas in the Superfund remedy selection process. The second fact sheet describes a set of proposed management review triggers to promote nationally consistent remedy selection decision-making.</p>	<p>EPA will revise both fact sheets based on comments received. The rules-of-thumb fact sheet will be issued as guidance to EPA Regional offices as soon as comments have been incorporated (expected timeframe - second quarter FY97). The revised draft of the proposed management review triggers will be presented at a national Superfund program managers' meeting as the basis for a discussion on updating and consolidating management consultation requirements for Superfund remedy selection decisions. The management consultation process will be revised in FY97.</p>
<b>2. Update Remedy Decisions at Select Sites</b>	<p>EPA issued this Reform guidance on September 27, 1996; however, many Regions anticipated its issuance, and completed a number of remedy updates earlier in FY96. During FY96, remedy updates of all types that achieved savings resulted in a total savings of over \$280 million. Of this \$280 million, over \$250 million resulted from updates of the kind identified in the Reform guidance.</p>	<p>Headquarters will continue to work with the Regions on implementation of this reform.</p>
<b>3a. Clarify the Role of Cost in the Remedy Selection Process</b>	<p>EPA issued a fact sheet, "The Role of Cost in the Superfund Remedy Selection Process," on September 10, 1996. Through the distribution of this fact sheet, EPA hopes to ensure that all stakeholders involved in the Superfund process fully understand the important role of cost in remedy selection under existing law and policy and recent initiatives aimed at enhancing the cost-effectiveness of remedial actions.</p>	<p>Implementation of this reform is complete.</p>
<b>3b. Directive on National Consistency in Remedy Selection</b>	<p>The Agency issued a Directive entitled "National Consistency in Superfund Remedy Selection" (from Elliott P. Laws to Regional Division Directors) on September 25, 1996. This directive emphasizes the critical importance of maintaining appropriate national consistency in the Superfund remedy selection process and requests that program managers make full use of existing tools and consultation opportunities to promote such consistency.</p>	<p>EPA begins initiation of efforts to review and consolidate management consultation requirements/activities in fall 1996.</p>
<b>4. Clarify Information Regarding Remedy Selection Decisions</b>	<p>EPA developed a draft summary sheet that was sent out for review by EPA Regional offices, other involved Federal agencies, and State environmental agencies in August 1996. The summary sheet provides a tool for clearly presenting, in a standardized format, the context, basis, and rationale for site-specific Superfund remedy selection decisions.</p>	<p>Once comments are incorporated, EPA will issue the summary sheet as an interim product and explore its use as a suggested format for summarizing critical site information in support of Agency management briefings. Federal Facilities will also be invited to pilot its use in their programs as well.</p>

<b>Administrative Reform</b>	<b>Status</b>	<b>Next Steps</b>
<b>5a. Community Participation in Designing Risk Assessments</b>	EPA will pilot a process for involving stakeholders early in the risk assessment process. Headquarters staff is currently working with the Regions to identify candidate sites. Many Regions currently involve stakeholders in designing site-specific risk assessment and in the site assessment process. Several Regions have either developed fact sheets or additional guidance on this reform.	Pilots will be evaluated using a case-study approach. Findings will then be used to develop guidance describing the role of community stakeholders in the risk assessment process.
<b>5b. PRP Performance of Risk Assessments</b>	On January 26, 1996, EPA issued a new policy to allow PRPs to conduct a risk assessment at most sites where they are also performing the RI/FS. The new policy removed the previous need for the Regions to consult with Headquarters before authorizing a PRP to conduct the risk assessment. Eight Regions have indicated that they are identifying sites where PRPs will be conducting the risk assessments.	Implementation of this reform is complete.
<b>6a. Establish National Criteria on Superfund Risk Assessments</b>	The Agency has prepared draft documents that: outline technical approaches to risk assessment, standardize risk assessment reporting data tables, and provide risk assessment quality assurance checklists. A workgroup has completed a preliminary review of the outlined technical approach and the standardized risk assessment data reporting tables. EPA issued draft standard risk assessment data reporting tables in July 1996. Comments have been received and are being addressed by EPA.	The workgroup will issue a generic Statement of Work (SOW) on risk assessments in September 1997.
<b>6b. Standardize Risk Assessments</b>	EPA has drafted short issue reports that are being used broaden dialog within the Agency and with outside stakeholders. EPA has identified technical and policy issues in 14 focus areas.	Information from stakeholder dialog meetings will be evaluated and individual issues will be assigned to work groups to be further developed and addressed.
<b>6c. Utilize Expert Workgroup on Lead</b>	An April 17, 1996 memorandum to senior Regional managers included a request for information on residential lead risk assessments. A draft plan also was proposed for achieving these goals. Comments on the draft plan were received at the end of May. Currently, the analysis of residential lead risk assessments is in the planning stages.	EPA convened a national workshop on model validation in October 1996. Regional support is needed for sending information to Headquarters, establishing an effective structure for dialog, and other issues. Contractor efforts will have standard operating procedures for collection of data that will be reviewed by the Technical Review Workgroup for lead risk assessments.
<b>7. Establish Lead Regulator for Federal Facilities</b>	Headquarters has convened a workgroup to develop guidance on identification and implementation of the single regulator concept. Headquarters has held 13 workgroup meetings since the fall of 1995. Some Regions have been able to begin implementing this concept in advance of guidance issuance.	The workgroup will complete major deliberations and EPA will draft guidance and circulate guidance more widely to States for their input. EPA will issue final guidance in mid-FY97.
<b>8. Consider Response Actions Prior to NPL Listing</b>	EPA HQ has worked with the Regions and States during FY96 to develop a policy directive to implement this reform. EPA HQ is currently evaluating different options that would take into account response actions occurring in the post-site inspection stage and their impact on NPL listing. In August 1996, HQ OERR conducted another round of review and comment on the reform and identified the critical issues to be resolved.	EPA will review and summarize State comments, as well as cross-reference them against EPA Regional comments for any final issues that need to be addressed. EPA should finalize the reform in FY97. The October 1992 NPL regulation, "Guidance for Setting Priorities for NPL Candidate Sites," will be amended by FY97.
<b>9. Delete Clean Parcels from the NPL</b>	EPA sent guidance to map and track partial deletions at NPL sites to the Regions on April 30, 1996. EPA published four Notices of Intent to Delete (NOIDs) in three Regions during 1996. In addition, Region 10 published two partial deletion notices in 1996. Other Regions are re-evaluating sites to determine if a partial deletion is warranted.	Many Regions have indicated that they have sites where they would like to delete portions and Headquarters has received several draft NOIDs for review.

Administrative Reform	Status	Next Steps
<b>10a. Promote Risk-Based Priority Setting at Federal Facility Sites</b>	Headquarters has obtained internal comments (including Regional input) on guidance drafted for the Regions which will address the role of risk and other factors (e.g., cost, community concerns, environmental justice, cultural considerations) in setting priorities at Federal facility sites. Regions have begun to implement the concept of risk-based priority setting at Federal facility sites.	EPA will issue final guidance in the second quarter of FY97.
<b>10b. Promote Risk-Based Priority for NPL Sites</b>	Projects are evaluated based on five criteria: 1) risks to humans; 2) ecological risks; 3) stability of contaminants; 4) contaminant characteristics; and 5) economic, social, and program management considerations. During FY96, 42 projects totaling over \$276 million were funded in accordance with National Risk-Based Priority Panel (Panel) recommendations. By early FY97, the Panel had ranked projects approaching \$1 billion in cleanup costs. The Panel met in October 1996.	The Panel will reconvene in early spring 1997.
<b>11. Orphan Share Compensation</b>	Interim final guidance was issued on June 3, 1996. A Headquarters assistance team has been established to assist with the implementation of this reform. The team is working closely with DOJ and the Regional staff to implement this reform. The Agency offered over \$57 million in FY96 to potential settling parties in recognition of the orphan share at 24 Superfund sites across the United States.	In FY97, EPA will continue to bear a portion of the orphan share by compromising costs at sites where parties agree to perform cleanups. These agreements follow the Agency guidance issued in June 1996 and are limited by existing appropriations. In addition, EPA will be considering possible changes to the guidance, including applicability to early <i>de minimis</i> settlers, within the bounds of these parameters.
<b>12. Site Specific Special Accounts</b>	In implementing this Reform, the Regions established 23 Special Accounts in FY96, containing a total of \$78 million. As of September 30, 1996, EPA has set up a cumulative total of 59 Special Accounts. The total balance of funds available in Special Accounts is \$261 million, representing \$226 million in principal. Thirty-five million dollars in interest (interest is through August 31, 1996) is also now credited to these accounts and is available for future response actions at each site.	EPA will be providing general program and financial guidance to the Regions in the near future. The Agency will continue to monitor the success of this reform.
<b>13. Equitable Issuance of Unilateral Administrative Orders (UAOs)</b>	EPA issued a memorandum to the Regions in August 1996 that establishes procedures for Regional Staff to document their reasons for proposing that certain PRPs be excluded from UAOs. The guidance also reaffirms EPA policy to issue such UAOs to the largest number of PRPs appropriate.	During FY97, the Agency will establish a process for ensuring that the Regions prepare the necessary documentation.
<b>14. Revised De Micromis Guidance</b>	On June 3, 1996, EPA has issued new guidance and models designed to streamline and simplify the process to protect contributors of extremely small amounts of waste (de micromis contributors) by creating routine settlement practices where practicable.	EPA will continue to identify those sites where implementation of this reform is appropriate.
<b>15. Adopting Private Party Allocations</b>	EPA established a national workgroup to determine the parameters and identify opportunities for implementation of this reform. The Agency has adopted private party allocations at several sites, including the Doepke Holliday Site in Kansas where the PRPs will perform the cleanup of the site and reimburse 100% of EPA response costs.	The workgroup determined that current Superfund policies are adequate for providing direction to implement the reform and, as a result, no new guidance is planned at this time.
<b>16. Reduced Oversight for Capable and Cooperative PRPs</b>	On July 31, 1996, an EPA Regional/Headquarters workgroup issued a six-page directive to implement this new reform. EPA Regions have identified approximately 100 sites where reductions in oversight of ongoing work for cooperative and capable PRPs have occurred or will occur, significantly reducing costs at some of these sites.	Regions will notify cooperative parties that they have already received reduced oversight or will receive reduced oversight. Regions will be encouraged to provide PRPs with an up-front estimate of contractor costs for oversight.

<b>Administrative Reform</b>	<b>Status</b>	<b>Next Steps</b>
<b>17. Authorize Remedy Selection by States and Tribes</b>	EPA has shared information regarding Regional efforts in shifting remedy selection to the States. The National workgroup has developed criteria and a process to select new pilots and to monitor and assess the results.	By winter 1997, EPA will develop "lessons learned" for past and ongoing pilots and will identify new pilots.
<b>18. Pilot Community-Based Remedy Selection Process</b>	Regions have identified sites where they are using or plan to use a consensus-based approach to select a remedy for a site. In an Oakridge, Tennessee site, \$160 million in cleanup costs were saved through community participation.	A Headquarters/Regional workgroup will look at sites to identify factors that affect community understanding and participation in the cleanup process. By December 1996, the workgroup will issue guidelines on empowering local citizens and stakeholders.
<b>19. Establish Superfund Ombudsman in Every Region</b>	All 10 Regions nominated an Ombudsman by the prescribed date of March 31, 1996. The Joint Headquarters-Regional Workgroup (Workgroup) attended the first EPA Ombudsman Conference and Training Seminar.	The Workgroup will continue to provide assistance to the Regional Ombudsmen as needed and will also perform periodic evaluations. The Superfund Regional Ombudsmen will have another conference in early 1997 to further refine their negotiation, facilitation, and conflict resolution skills.
<b>20. Improve Communication with Superfund Stakeholders</b>	EPA activated the Headquarters Superfund Homepage in March 1996. All of the Regional offices also have developed homepages.	A workgroup involving Headquarters and the Regions will develop procedures for consistency of electronic information and will identify sites and stakeholder groups to use as pilots for sharing electronic information.

## SUPERFUND REFORMS ANNUAL REPORT FISCAL YEAR 1996

### SUMMARY OF STATUS AND NEXT STEPS, ROUND 2

Administrative Reform	Status	Next Steps
<b>1. PRP Search Pilots</b>	In 1995, EPA held a national conference on PRP search procedures and is now reorienting the PRP search process to facilitate expedited settlements and more fully identify a larger universe of PRPs earlier in the process. EPA provided early PRP search resource packages for Regional pilot participants. Using at least one streamlining technique, EPA is conducting pilot searches at 15 sites under Superfund Reauthorization Act of 1994 (SRA) provisions to determine the feasibility of the proposed search timeframe.	EPA expects to finalize the Revised PRP Search Manual in early 1997, after Regional review and comment. Other actions EPA has tentatively planned include Regional training/information-sharing. EPA may hold a national conference in 1997.
<b>2. Expedited Settlements</b>	EPA developed the following tools to assist with the settlement of <i>de minimis</i> and ability-to-pay parties under this reform: 1) "Overview of Ability-Pay-Guidance and Models" (fact sheet), 2) "Standardizing the <i>De Minimis</i> Premium" (guidance document), 3) Revised Model CERCLA Section 122(g)(4) <i>De Minimis</i> Contributor Consent Decree (guidance model), and 4) Revised Model CERCLA Section 122(d)(4) <i>De Minimis</i> Contributor Administrative Order on Consent (guidance model). To date, EPA has successfully completed five expedited settlements.	EPA will continue to emphasize the importance of removing small waste contributors from the Superfund enforcement process. Several expedited settlement pilots are ongoing. EPA also intends to issue four policy documents regarding the ability-to-pay determinations in Superfund settlements.
<b>3. Allocation Process</b>	As of September 1996, EPA has offered to pilot the allocation process at twelve Superfund sites. Two of the sites reached settlement outside the allocation process, leaving ten active pilot sites. EPA has learned numerous lessons about the allocation process, including: identifying additional PRPs through a nominations process requires collaboration between the Agency and PRPs; allocator selection, hiring, and payment may need revision; resolution of issues during the allocation process benefits the parties and expedites settlement; and settlement before the allocator's report may be an option.	The Agency will continue to implement the allocation process at pilot sites.
<b>4a. Brownfields Pilot Projects</b>	By the end of FY96, EPA announced the selection of 76 Brownfields pilots to be funded through cooperative agreements at up to \$200,000 each for a two-year period. EPA has signed Memoranda of Understanding with other Federal partners to coordinate issues related to Brownfields redevelopment and to leverage additional opportunities. Guidance and other initiatives have been announced by EPA. The "Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996" was passed. EPA has archived over 27,000 sites from CERCLIS.	EPA will announce an additional 25 pilots in FY97 and will provide guidance and funding to capitalize revolving loan funding programs. EPA will announce new Action Agenda commitments beginning calendar year 1997.
<b>4b. Community Outreach</b>	Each Region has established a Brownfields coordinator and headquarters has assigned five staff members to support the project. EPA is promoting and fostering job development and training through partnerships with Brownfields pilot communities and community colleges. EPA has established an environmental education and training center to provide comprehensive technical-level training.	EPA will continue outreach to stakeholders on Brownfields involvement. Technical assistance will be provided through existing partnerships and pilots to other Federal agencies and non-governmental organizations.
<b>4c. Refining CERCLIS</b>	In June 1996, EPA provided guidance on site types eligible for archiving and initiated efforts to research sites in CERCLIS and make archive decisions. Approximately 27,000 total sites have been archived from CERCLIS through FY96.	EPA anticipates archiving over 1,000 additional sites from CERCLIS per year over the next several years based on completing Superfund activities at existing and new sites.

<b>Administrative Reform</b>	<b>Status</b>	<b>Next Steps</b>
<b>4d. Clarifying NPL Sites</b>	EPA sent guidance to the Regions to map and track partial deletions at NPL sites on April 30, 1996. Several Regions have published Notices of Intent to Delete (NOIDs) and the Regions are re-evaluating sites to determine if a partial deletion is warranted. EPA issued final soil screening guidance in May 1996.	The partial deletions portion of this reform is currently being implemented as Reform 9 (i.e., Delete Clean Parcels from the NPL) in the third round of Superfund reforms.
<b>4e. Removing Liability Barriers</b>	EPA issued the following guidance documents that provide some assurance to prospective purchasers, lenders, and property owners that they need not be concerned with Superfund liability: "Guidance on Agreements with Prospective Purchasers of Contaminated Property"; "Policy Towards Owners of Property Containing Contaminated Aquifers"; "Policy on CERCLA Enforcement Against Lenders and Government Entities that Acquire Property Involuntarily;" and "Policy on the Issuance of Comfort/Status Letters."	Efforts will continue on the development of tools to provide some assurance that entities dealing with contaminated property need not fear incurring Federal environmental liability. To identify, describe, and differentiate between the various tools available, EPA is creating the "Catalog of Tools for Managing Risk at Contaminated Properties."
<b>5a. Community Advisory Groups (CAGs)</b>	EPA issued the "Guidance for Community Advisory Groups at Superfund Sites" in December 1995, encouraging the use of CAGs at sites. As of September 1996, there were 23 CAGs. EPA has completed a document containing case studies on five CAGs planned for distribution early in FY97.	EPA will continue to evaluate existing CAGs and their impact on community involvement, and identify and develop new tools to promote and assist CAGs. Several fact sheets on the CAG program should be ready for distribution early in FY97.
<b>5b. Technical Assistance Grants (TAGs)</b>	During FY95-96, EPA revised the TAG rule. The new rule contains several provisions to simplify the TAG process. The provisions include: cash advances for grantees to provide them with working capital; elimination of the three-year budget period which allows groups to determine their own budget period according to site-specific needs; and the removal of the 20% administrative cap.	Preparations are underway to publish the proposed, revised TAG rule by June 1997. Additionally, options are being explored to authorize the use of TAG funds for training and advance funding.
<b>6. Community Involvement in the Enforcement Process</b>	EPA initiated pilot projects at 13 sites in nine Regions. Piloted activities include community involvement in Statements of Work (SOWs), Feasibility Studies (FSs), and Remedial Designs/Remedial Actions (RD/RAs), and community communication and cooperation with PRPs.	EPA is evaluating the impacts of enhanced community involvement on both the settlement negotiation process and the studies and cleanups themselves to identify those techniques that are most successful in strengthening community participation.
<b>7a. Training and Health Service Assistance to Communities</b>	The Medical Assistance Plan (MAP) was established to help under-served people living near hazardous waste sites. Although four sites were targeted for testing during FY95, funding was available to test only one site, the Del Amo/Montrose site in Torrance, California. At the Del Amo site, EPA's Region 9 office has taken steps to temporarily relocate residents living near the Superfund site.	EPA obligated \$400,000 to continue the Del Amo project in FY96. In addition, EPA and the Public Health Service will continue to seek funds sufficient to finance additional pilot projects in FY97.
<b>7b. Job Training and Development</b>	EPA is facilitating locally coordinated planning both to provide quality worker training and to ensure that brownfields sites hire workers from local job training programs. EPA has awarded 20 National Institute of Environmental Health Sciences (NIEHS) minority worker training grants. EPA is working with the Hazardous Materials Training and Research Institute (HMTRI) to expand environmental training and curriculum development at community colleges near Brownfields pilot communities.	EPA plans to continue to work with the NIEHS minority worker training program and hopes to develop additional pilots in brownfield areas. The Agency has chosen two pilot sites for environmental curriculum development. HMTRI plans to increase the number of community colleges offering environmental work force training programs over the next year.

<b>Administrative Reform</b>	<b>Status</b>	<b>Next Steps</b>
<b>8. Guidance for Remedy Selection</b>	EPA issued final soil screening guidance on May 17, 1996 which complements the ongoing Superfund Accelerated Cleanup Model initiative and provides the framework for other cleanup efforts. On May 25, 1995, EPA issued a directive titled "Land Use in the CERCLA Remedy Selection Process" which clarifies that land use should be considered in risk assessment and remedy selection. The Agency has issued various presumptive remedies, presumptive response strategies, and user's guides. EPA estimates time savings from 36% to 56% and future cost reductions up to 60% at municipal landfill pilots.	EPA is developing a new land use directive and presumptive remedy guidance on manufactured gas plants, PCB sites, VOCs, municipal landfills, metals in soil, and grain storage for issuance in FY97.
<b>9a. Risk-Sharing: Implementing Innovative Technology</b>	Several Regions have identified candidate sites for the risk-sharing initiative. In Region 1, EPA has entered into a risk sharing agreement with PRPs at a New Hampshire site. EPA agrees to pay half the cost of the innovative technology, not to exceed \$3.5 million, if the technology does not fulfill expectations and additional remedial action is necessary.	The Agency is in the process of preparing guidance on implementing the risk sharing initiative, which is expected by June 1997. EPA is developing mechanisms to engage State agencies in this initiative.
<b>9b. Risk-Sharing: Identifying Obstacles to Using Innovative Technology</b>	EPA is expanding the coverage of indemnification to include both the prime contractor and the innovative technology contractor when indemnification is offered so that the contractors can more easily pursue the use of innovative technologies.	Implementation of this reform is complete.
<b>10. Voluntary Cleanup Program</b>	EPA issued a memorandum in November 1996 on an interim approach for Regional relations with State voluntary cleanup programs. This memorandum sets out baseline criteria that will be considered as part of the evaluation of a State or Tribe's application for funding the development or enhancement of a voluntary cleanup program. Eight States have already signed Memoranda of Agreement (MOA) with their respective Regions concerning how EPA and the States will work together in addressing voluntary cleanup program sites.	EPA and the States will assess how the MOA process is working and will seek public comment on and finalize guidance on State voluntary cleanup programs by the end of FY97.
<b>11. Integrated Federal/State/Tribal Site Management Program</b>	On May 2, 1995, EPA issued final guidance on a program which allows EPA to defer from considering listing NPL-caliber sites on the NPL while States and Tribes initiate and oversee PRP responses. Since 1994, a total of eight sites have been formally deferred, while several sites have been informally deferred or are under consideration for deferral.	The Agency will continue to implement the deferral program.
<b>12. State/Tribal Superfund Block Funding</b>	EPA has established a 50-member work group on block funding which includes input from 17 States and Tribes. Ten States and one Tribe are currently participating in efforts to pilot the block funding concept. Their discussions will be used in the development of the final report for this reform.	EPA is scheduled to develop a preliminary report documenting obstacles in the award and utilization of Superfund resources and providing recommendations to improve the award and utilization of Fund monies to States and Tribes early in FY97.



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## ***SUPERFUND REFORMS ROUND THREE***

### **I. CLEANUPS**

#### **1. ESTABLISH COST-EFFECTIVENESS THRESHOLDS AND NEW RULES-OF-THUMB**

##### ***1a. Establish National Remedy Review Board***

**Description:** EPA created the National Remedy Review Board (NRRB) to help control remedy costs and promote consistent and cost-effective decisions at Superfund sites. The NRRB reviews proposed cleanup actions at sites where: 1) estimated costs for the preferred alternative are over \$30 million; or 2) proposed remedy costs are over \$10 million and 50% greater than the costs of the least-costly, protective alternative action that also complies with Applicable or Relevant and Appropriate Requirements (ARARs).

The NRRB helps to control remedy costs by providing a cross-Regional, management-level review of high costs (and thus, potentially controversial) decisions in “real time” on a site-specific basis. Its overall goal is to ensure sound decision-making that is consistent with current statutes, regulations, and guidance. The NRRB considers the nature of the site, the accuracy of the cost estimates, the risks posed by the site, and other additional relevant factors.

The NRRB is composed of EPA senior managers and technical experts from Headquarters and each Region. The NRRB issues advisory recommendations on proposed remedies that meet established cost criteria. Although NRRB decisions are not binding, it is expected that Regional decision-makers will give the NRRB’s recommendations substantial weight. The NRRB has already contributed greatly to improved consistency and cost-effectiveness in cleanup decisions.

**Status:** All 10 Regions, as well as eight other Agency Offices, have designated representatives to the NRRB. It has been in operation since January 1996. The NRRB has reviewed 12 proposed decisions at 11 sites, (representing eight Regions) and has provided substantive or technical advisory recommendations for nine of these decisions. Of the 12, five have progressed to “final ROD” (*i.e.*, Record of Decision), and one to Proposed Plan after considering the Board’s recommendations. As a result of the combined six reviews, the Agency expects to realize cost reductions of approximately \$8 million. EPA expects additional and substantial cost reductions in the future from among the other FY96 reviews as project costs are better designed in the “proposed plan” or

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“ROD.” Overall, the Board’s preliminary analysis indicates potential reductions in the range of \$15 million to \$30 million in total estimated site cleanup costs from reviews conducted this fiscal year.

**Next Steps:** As of October 10, 1996, the Board estimates there may be 10 - 20 decisions reviewed in FY97.

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### ***1b. Establish New Remedy Selection Management Flags (“Rules-of-Thumb”)***

**Description:** The goal of the rules-of-thumb initiative is to develop remedy selection rules that will promote cost-effectiveness and flag potentially “controversial” cleanup decisions for senior management review. EPA developed two fact sheets to implement this reform. The first fact sheet describes rules-of-thumb, or key principles and expectations, corresponding to three policy areas in the Superfund remedy selection process: risk assessment and risk management; treatment of principal threat/containment of low-level threat wastes; and ground water response actions. EPA strongly believes that an appropriately consistent application of national policy and guidance is an important means by which EPA ensures the reasonableness, predictability and cost-effectiveness of decisions. Gathering these remedy selection rules-of-thumb in one document will aid in supporting our efforts to promote these important objectives. The second fact sheet describes a set of proposed management review triggers to promote nationally consistent remedy selection decision-making.

**Status:** These proposals were reviewed by EPA Regional offices, other Federal agencies, and State environmental agencies in August 1996.

**Next Steps:** EPA will revise both fact sheets based on comments received. The rules-of-thumb fact sheet will be issued as guidance to EPA Regional offices as soon as comments have been incorporated. (This is expected by the second quarter of FY97). EPA has developed a draft summary sheet proposal. This proposal was reviewed by EPA Regional offices, other Federal agencies, and State environmental agencies in August 1996. The management review triggers fact sheet will be presented at a national Superfund program managers’ meeting in the second quarter of FY97 as the basis for a discussion on updating and consolidating management consultation requirements for Superfund remedy selection decisions (See Round 3 Reform 3b, “Directive on National Consistency in Remedy

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Selection”). The management consultation process will be revised by the end of FY97.

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## **2. UPDATE REMEDY DECISIONS AT SELECT SITES**

**Description:** The Agency has always been able to “update” or change the details of a cleanup strategy to reflect new information that may not have been available at the time the original decision was made. Typically, these changes are made to reflect new information about the characteristics or volumes of contamination present and/or new expectations regarding the performance of selected technologies under site-specific conditions. Further, these updates consider the implications of these factors on original decision criteria such as implementability, short-term effectiveness, and cost or community acceptance. Updates also may be made to reflect changes in State requirements (*i.e.*, ARARs), or other information that could not have been considered in the original decision. Once a Regional manager decides to undertake such changes, there may be specific requirements for public or other stakeholder involvement depending on the nature and significance of the anticipated change.

The Update Remedy Reform was undertaken specifically to encourage appropriate changes in response to advances in remediation science and technology. Reform guidance (Office of Solid Waste and Emergency Response (OSWER) Directive #: 9200.2-22) targeted the following three types of changes, but recognized that other types of changes may be appropriate as well: 1) changes in the remediation technology employed, where a different technology would result in a more cost-effective cleanup; 2) modification of the remediation objectives due to physical limitations posed by site conditions or the nature of the contamination; and, 3) modification of the monitoring program to reduce sampling, analysis, and reporting requirements, where appropriate. This reform recognized that recent advances in the area of ground water science and remediation made these types of decisions good candidates for updates.

It is important to emphasize that this initiative does not signal any changes in Agency policies regarding site cleanup, including policies regarding remedy selection, treatment of principal threats, preference for permanence, establishment of cleanup levels, waivers of cleanup levels, or the degree to which remedies must protect human health and the environment.

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**Status:** EPA issued this reform guidance on September 27, 1996; however, many Regions anticipated its issuance and completed a number of remedy updates earlier in FY96. During FY96, remedy updates of all types that achieved future cost reductions resulted in a total estimated future cost reduction of over \$280 million. Of this \$280 million, over \$250 million resulted from updates of the kind identified in the Reform guidance. The following are examples of reform related updates:

- At the Western Processing site in Washington, the ground water portion of the original remedy (valued at approximately \$200 million) was modified to reflect new information gained from remedy implementation. As a result of information collected during operation of the pump and treat remedy, the Region determined that the remedy could be significantly enhanced by extending the existing containment barrier and by automating the pumping system. These changes will greatly reduce the volume of ground water pumped and also reduce the monitoring and sampling costs. These changes also are fully consistent with EPA's recent guidance for remediating ground water. Accordingly, an Explanation of Significant Differences (ESD) was signed to implement the changes. Estimated costs of the modified remedy will be approximately \$118 million, resulting in overall reductions in remedy costs of \$82 million.
- At the A. O. Polymer site in New Jersey, the original ground water remedy included pumping and treating with powdered activated carbon followed by filtration and carbon polishing to achieve State maximum contaminant levels, at a cost of approximately \$19 million. Through a request to revise the treatment system by a potentially responsible party (PRP), EPA and New Jersey reviewed the data and granted the request to update the ground water treatment system to air stripping at a cost of approximately \$10 million. Additional future cost reductions will be realized through refining the capture zone of the pumping system and by reducing pumping volumes. An ESD was signed to implement these changes, which EPA estimates will result in a reduction in remedy costs of over \$9 million.

The spirit of this reform is also evidenced in source control decision updates, such as the following:

- At the Norwood PCB site in Massachusetts, the original soil remedy called for on-site solvent extraction (an innovative technology) at costs estimated at slightly over \$13 million in 1989, but which had increased to over \$54 million in 1995. Difficulties in locating solvent extraction facilities due to space constraints and safety issues were encountered in the pre-design phase. From 1989 to 1995, EPA re-examined the risk-based site cleanup goals based on revisions to human health and ecological risk

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calculations and clarified the reasonably anticipated future land use for the site. Based on the new site information obtained from this re-examination (together with data showing that all treatment technologies evaluated in the original remedy could not be implemented due to limited space), an alternate approach of consolidation was developed. The Record of Decision (ROD) amendment was signed updating the soil remedy to consolidation under an impermeable asphalt cap which could facilitate future site development at a cost of just over \$7 million. EPA estimates this amendment will result in overall reductions in cost of approximately \$47 million.

- At the Metamora site in Michigan, the original soil remedy called for excavation and incineration of co-mingled soils at a cost of approximately \$70 million. Additional soil characterization during remedy implementation showed that materials previously categorized as “principal threats,” for which treatment is strongly preferred, were in actuality “low level threats,” for which containment is generally acceptable. EPA reviewed and approved a request made by a PRP to reconsider the threat posed by soil. A ROD amendment was signed which updated the remedy to consolidation of soils into an on-site landfill at a cost of approximately \$42 million. The future cost reduction of over \$28 million resulted from improved understanding of the nature of the soil contamination and is consistent with policy expectations regarding treatment of principal threats or containment of low-level threats.

**Next Steps:** Headquarters will continue to work with the Regions on implementation of this reform.

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### **3. CLARIFY THE ROLE OF COST AND MAINTAIN CONSISTENCY THROUGHOUT THE REMEDY DEVELOPMENT PROCESS**

#### ***3a. Clarify the Role of Cost in the Remedy Selection Process***

**Description:** The objective of this reform is to clarify the current role of cost as established in existing law, regulation, and policy. The fact sheet developed in support of this reform does not elevate or establish a new role for cost in the Superfund program, but rather summarizes the current role of cost in the Superfund program as established by CERCLA, the National Contingency Plan (NCP), and current guidance. Through the

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distribution of this fact sheet, EPA hopes to ensure that all stakeholders involved in the Superfund process fully understand the important role of cost in remedy selection under existing law and policy and recent initiatives aimed at enhancing the cost-effectiveness of remedial actions.

**Status:** EPA issued the fact sheet on September 10, 1996. It is entitled, “The Role of Cost in the Superfund Remedy Selection Process” (Publication 9200.3-23FS) and is available through National Technical Information Service.

**Next Steps:** Implementation of this reform is complete.

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### **3b. *Directive on National Consistency in Remedy Selection***

**Description:** This directive emphasizes the critical importance of maintaining appropriate national consistency in the Superfund remedy selection process and requests that program managers make full use of existing tools and consultation opportunities to promote such consistency. In particular, this memorandum identifies a range of efforts that support national consistency in remedy selection and encourages informed discussion of cross-cutting issues. One such effort includes a program for Headquarters support of Regional decision-making in key “focus areas” as announced in an Office of Emergency and Remedial Response (OERR) memorandum dated May 22, 1996. This memorandum identifies selected issue areas that represent the current focus of OERR’s national Regional coordination effort. These areas include risk management and cost-effectiveness, decision documentation, ground water policy, lead policy, and presumptive remedies implementation. Use of existing guidance and appropriate consultation across Regions and with Headquarters in these and other areas may dramatically improve the efficiency and consistency of the remedy selection process and, in turn, increase the cost-effectiveness of program decisions.

The Directive on “National Consistency in Superfund Remedy Selection” (Office of Solid Waste and Emergency Response (OSWER) Directive 9200.0-21) also recognizes that there are currently a number of policy documents that promote Regional consultation or interaction with Headquarters on key issues and announces that an effort to consolidate and simplify this range of consultation activities will be initiated in Fall 1996.

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**Status:** EPA issued the Directive entitled, “National Consistency in Superfund Remedy Selection” (from Elliott P. Laws to Regional Division Directors) on September 25, 1996.

**Next Steps:** EPA begins initiation of the effort to review and consolidate management consultation requirements/activities in Fall 1996.

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#### **4. CLARIFY INFORMATION REGARDING REMEDY SELECTION DECISIONS**

**Description:** The goal of this initiative is to design a tool for clearly presenting, in a standardized format, the context, basis, and rationale for site-specific Superfund remedy selection decisions. This Remedy Selection Summary Sheet format should describe the following: site contamination; risks posed by the site; the preferred remediation alternative identified to address the risks; and the costs and other tradeoffs that were balanced in the identification of this preferred remediation alternative. This summary sheet format could be used by EPA, other Federal agencies, and State agencies in conjunction with a Proposed Plan to communicate site-specific remedy selection information to the public. It could also be used to help organize key remedy selection information for program managers.

**Status:** EPA has developed a draft summary sheet proposal. This proposal was reviewed by EPA Regional offices, other Federal agencies, and State environmental agencies in August 1996.

**Next Steps:** Once comments are incorporated, EPA will issue the summary sheet as an interim product and explore its use as a suggested format for summarizing critical site information in support of Agency management briefings (e.g., National Remedy Review Board). Federal Facilities will also be invited to pilot its use in their programs as well.

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## 5. INSTITUTE NEW ROLE FOR STAKEHOLDERS IN RISK ASSESSMENTS

### 5a. *Community Participation in Designing Risk Assessments*

**Description:** EPA will conduct two projects to empower stakeholders to participate in the design and implementation of Superfund site risk assessments. In the first project, the Agency will pilot an effort in which community stakeholders will help design the site-specific baseline risk assessment at the scoping stage of the remedial investigation. Working with Regional staff, stakeholders would assist in determining possible future uses of the site, reasonable exposure pathways, and characteristics of the local population. Involving local people will allow the site manager to: assess possible exposure pathways, determine which human behaviors and activities might be expected, and provide a realistic foundation for conducting risk assessments and selecting cleanup options.

**Status:** At a number of sites nationwide, the Agency will pilot a process to involve stakeholders early in the risk assessment process. Headquarters staff is currently working with the Regions to identify candidate sites. EPA is implementing this reform jointly with the “Community-Based Remedy Selection” reform (See Round 3; Reform 18). Some Regions are currently involving stakeholders in the development of the baseline risk assessment for specific sites, while others are involving interested stakeholders in the site assessment process. Several Regions have either developed fact sheets or additional guidance on this reform.

For the Big River NPL site and other historic lead mining sites in Missouri’s St. Francois County, Region 7, in cooperation with Missouri’s Department of Health and Department of Natural Resources, presented risk assessment training to the local community. The training was attended by the community action group and representatives from a diverse cross-section of the community. The training will enable the community to participate in the risk decision-making and lay the ground work for participation later in the response action decision-making stage.

**Next Steps:** Pilots will be evaluated using a case-study approach. Findings will then be used to develop guidance describing the role for community stakeholders in the risk assessment process.

**Contact:** Caroline Previ, OERR, (703) 603-8704



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## **5b. PRP Performance of Risk Assessments**

**Description:** The second project under this reform allows PRPs to conduct Superfund site risk assessments in appropriate cases as part of the overall remedial investigation/feasibility study (RI/FS). Allowing PRPs to perform risk assessments makes the cleanup process more efficient by: decreasing the time needed for conducting the RI/FS study; improving communication between EPA and PRPs; giving PRPs a greater role in the decision-making process; and reducing EPA's oversight requirements.

**Status:** On January 26, 1996, OSWER Directive No. 9340.1-02 announced EPA's new policy to allow PRPs to conduct the risk assessment at most sites where they are also performing the RI/FS. The Directive listed six criteria that the Regions are to consider when deciding whether or not to allow the PRP to perform the risk assessment. The new policy also removed the previous requirement for the Regions to consult with Headquarters before authorizing a PRP to conduct the risk assessment. Eight Regions have indicated that they are identifying sites where PRPs will be conducting the risk assessments.

**Next Steps:** Implementation of this reform is complete.

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## **6. ENSURE REASONABLE AND CONSISTENT RISK ASSESSMENTS**

### **6a. Establish National Criteria on Superfund Risk Assessments**

**Description:** Three initiatives are aimed at improving the Superfund risk assessment process. This first project will establish national criteria for the Regions to plan, report, and review Superfund risk assessments. EPA is issuing guidance to assure that risk assessments: 1) are well-scoped and well designed; 2) use a standardized presentation format; and 3) are easier to review by Superfund risk assessors. These improvements will help to promote clarity and consistency in the development of risk assessments and facilitate decision-making for response actions at Superfund sites. Standard reporting requirements will help to ensure that assessments are consistent and reasonable.

**Status:** The Agency has prepared draft documents that: outline technical approaches to risk assessment; standardize risk assessment data reporting tables; and provide risk assessment quality assurance checklists. EPA has established a workgroup of Headquarters and Regional representatives to review and revise these drafts and produce

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final guidance. The workgroup has so far completed a preliminary review of the outlined technical approach and the standardized risk assessment data reporting tables. EPA issued draft standard risk assessment data reporting tables in July 1996. Comments have been received and are being addressed by EPA.

**Next Steps:** Based on its review of the proposed technical approach to risk assessments, the workgroup has decided to develop a generic statement of work (SOW) for risk assessments. This SOW would be used in contracts, cooperative agreements and settlements to ensure that risk assessments are well designed and consistent in the type and quality of risk information that is provided at all sites. The group also will make modifications to the proposed standardized risk assessment data reporting tables. Comments received on the draft tables will be reviewed and addressed. Data in these tables will then be compared with information requirements in the new version of the primary Superfund database, CERCLIS 3 (*i.e.*, Comprehensive Environmental Response, Compensation and Liability Information System), to ensure that the risk data needed for national program management are clearly provided in all risk assessments. Once the risk assessment tables are finalized, the group will present this information in a consistent electronic format, allowing the data to be downloaded directly into CERCLIS 3 - thus making it available for national review and analysis. The workgroup will consider the most appropriate mechanisms to facilitate review of risk assessments. The workgroup will issue a generic SOW on risk assessments in September 1997, which will contain the standardized tables and methodology to be used to facilitate review of risk assessments.

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#### **6b. *Standardize Risk Assessments***

**Description:** This initiative will improve current national Superfund risk assessment guidance by selectively updating the 1989 Risk Assessment Guidance for Superfund. Specific areas where improvements can be made include exposure assessment, human health toxicity assessment, risk characterization, ecological damage assessment, the application of risk assessment in risk management decision-making, and risk communication. Changes that widen stakeholder involvement and incorporate technical peer review also will improve the technical quality and application of Superfund risk assessment. Other improvements may include standardizing those “pieces” of the risk assessment process that vary little from site to site. This initiative also may develop reasonable default assumptions about expected pathways and routes of human exposure for different types of land uses or activities.

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**Status:** The project leader has been meeting since February with stakeholder groups soliciting their ideas for improvements, and assessing their interest in participating in the improvement process. A workgroup consisting of Regional, Headquarters, and Office of Research and Development (ORD) Superfund risk assessors and managers has been meeting weekly to biweekly by phone.

The workgroup has drafted short issue reports that are being used to broaden dialog within the Agency and with outside stakeholders. The group has identified technical and policy issues in about 14 focus areas. About two-thirds of the Regions have been actively involved with the workgroup. In June, the workgroup compiled the issue papers into a single Key Issue Report entitled, "Risk Assessment Guidance for Superfund Reform Work Group's Draft Key Issue Report." The group sent the Key Issue Report to Superfund Branch Chiefs (Regions 1-10), the OERR Executive Team, Senior Management Team and the OSW/OERR Leadership Team for comment and advisory vote on setting priorities and providing a basis for a Steering Committee to guide the activities of implementing workgroups.

EPA held a series of Stakeholder dialog meetings for risk assessors, risk managers, local government officials, Federal and State agency representatives, industry members, and citizens for an interactive discussion of exposure assessment, toxicity evaluation, risk characterization and risk communication. The forum gave stakeholders a chance to do the following: provide their suggestions on how to improve the Risk Assessment Guidance; learn more about the issues to better understand risks; set priorities based on those risks; and manage those risks in the most effective and inclusive way possible.

**Next Steps:** Two dialog groups of stakeholders will be assembled (in San Francisco on October 30 - November 1, and in Washington on November 6-8, 1996) for discussions of themes and direction. Information from the stakeholder dialog meetings will be evaluated and individual issues will be assigned to workgroups to further develop technical approaches and policy.

**Contact:** David Bennett, OERR, (703) 603-8759

#### ***6c. Utilize Expert Workgroup on Lead***

**Description:** EPA has established an expert workgroup to standardize risk assessment approaches for lead-contaminated Superfund sites. Lead contamination poses significant problems because it is common at Superfund sites, can affect neurological development in children, and is prevalent in economically disadvantaged and minority-populated areas.

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The Technical Review Workgroup (an Agency workgroup of experts in lead toxicity and exposure assessment) provides information and advice to Regional risk assessors and site managers on a wide range of issues pertaining to lead contamination, but generally focuses on sites with complex or national precedent setting lead issues.

This initiative links and expands existing efforts that support lead risk assessment and policy. The workgroup is responsible for information collection, analysis of key issues, providing feedback to the Regions, and networking on lead issues. The goals of this initiative are: to provide information on the similarities and differences in Regional approaches to lead risk assessment (and the uses of these assessments); and to create a forum for site managers and senior managers to discuss alternative risk assessment approaches.

**Status:** At this point, EPA issued a call for information in an April 17, 1996 memorandum to senior Regional managers, which included a request for information on residential lead risk assessments and a draft plan for achieving these goals. EPA received comments on the draft plan at the end of May. Currently, the analysis of residential lead risk assessments is in the planning stages.

**Next Steps:** EPA convened a national workshop on model validation in October 1996. This initiative relies on Regional support for sending information to Headquarters as well as the establishment of an effective structure for dialog, among other issues. Contractor efforts will have standard operating procedures for collection of data that will be reviewed by the Technical Review Workgroup for lead risk assessments. EPA Regions, ORD, and the Office of Pesticides, Prevention, and Toxic Substances participate in the Technical Review Workgroup activities. Regional site managers who formed in the Lead Sites Workgroup share their expertise with other site managers and the Technical Review Workgroup.

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## **7. ESTABLISH LEAD REGULATOR FOR FEDERAL FACILITIES**

**Description:** A cleanup may be governed by multiple authorities; *e.g.*, Superfund, the Resource Conservation and Recovery Act (RCRA), and/or State laws. Historically, this has occurred more often at Federal facilities where, until recently, EPA policy requires

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listing sites on the NPL, regardless of RCRA status. Although Federal agencies involved in a cleanup share the same goals of protecting human health and the environment, their processes and even cleanup standards may be different. In addition, the overlapping authorities may be duplicative and an inefficient use of resources. Establishing clearly

defined roles for various regulators at various facilities should help simplify the cleanup process as well as provide for more efficient staffing.

To meet this goal, EPA is developing guidance that will promote the single regulator concept, specify roles, and outline the general principles and guidelines that Federal and State partners should assume in overseeing cleanup responses. The guidance will be developed by EPA with the advice of an interagency workgroup chaired by EPA that includes States as co-implementers.

**Status:** Headquarters has convened a workgroup (underway since Fall 1995) which includes EPA Regions, Federal agencies and State representatives to develop guidance on identification and implementation of the single regulator concept. Headquarters has held 13 workgroup meetings since the Fall of 1995. The workgroup has made considerable progress in analyzing and understanding options.

Some Regions have been able to begin implementing this concept in advance of issuance of guidance. Regions 4, 8 and 10 have made considerable progress negotiating agreements with Federal agencies and States that designate a single regulator with lead oversight responsibilities. Region 4 plans to continue to work with the States to establish lead regulator responsibility for all Department of Energy (DOE) and Department of Defense (DOD) sites. Region 8 finalized their Rocky Flats Compliance Agreement this summer which adopted the lead regulator concept. Region 10 has had in place since October 1994, an agreement with the State of Washington that divides the sizable Federal facility workload between EPA and the State. Regions 5 and 6 have been working with Ohio and Texas respectively to implement comparable agreements.

**Next Steps:** The workgroup will complete major deliberations and EPA will draft guidance and circulate guidance more widely to States for their input. EPA should issue final guidance in mid-FY97.

**Contact:** Lucy McCrillis, FFRRO, (202) 260-2457

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## 8. CONSIDER RESPONSE ACTIONS PRIOR TO NPL LISTING

**Description:** Current policy establishes a cutoff date for information used to evaluate sites for the NPL. Thus, under current policy, EPA does not consider the impact of subsequent response actions on the need for NPL listing. Revising the guidance would allow EPA to take recent response actions into consideration when determining whether a site should be placed on the NPL. EPA would determine a site's NPL status by evaluating risks to human health and the environment after response actions were taken. EPA would then consult, where appropriate, with the State, Tribe, Agency for Toxic Substances and Disease Registry, and the potentially affected community before making this decision. EPA expects that this will have a positive effect by providing incentives for voluntary cleanup, and encouraging reuse or redevelopment of the property while not compromising the quality of cleanup actions.

This reform will provide incentives for Federal agencies and private parties to conduct response actions and better set priorities for listing sites on the NPL. The reform categorizes sites with certain types of response actions as low priority for the NPL. Once a site has been classified as low priority for the NPL, then EPA may assign these sites archive status in CERCLIS, which encourages redevelopment. This reform serves as an addendum to the "Guidance for Setting Priorities for NPL Candidate Sites" (OSWER Policy Directive 9203.1-06, October 28, 1992).

**Status:** *NPL Listing/Removal Policy* - EPA Regions support an NPL site prioritization and CERCLIS archival approach for NPL-caliber sites where cleanup criteria have been met as a result of a response action occurring in the post-site inspection stage. The States and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) issued "full support" and no comments. EPA Headquarters worked with the Regions and States during FY96 to develop a policy directive to implement this reform. There is strong EPA Regional and State support for taking into account response actions occurring in the post-site inspection stage. EPA Headquarters has made no final decision on this approach and is currently evaluating other options that would address these response actions and their impact on NPL listing.

In August 1996, OERR conducted another round of review and comment on the reform and identified some critical issues yet to be resolved. Headquarters OERR staff are currently meeting to discuss and resolve these issues. Alternatives to this approach have been discussed and evaluated for any major issues that may arise. Once these alternatives are further refined for review and comment, the Regional input will be solicited.

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**Next Steps:** EPA will review and summarize State comments, as well as cross-reference them against EPA Regional comments for any final issues that need to be addressed. In July, EPA will brief senior management on this reform. Following senior management briefing and comment, EPA should finalize the reform in FY97. The Agency will amend the October 1992 NPL regulation by FY97.

**Contact:** Tim Gill, OERR, (703) 603-8856

## **9. DELETE CLEAN PARCELS FROM THE NPL**

**Description:** EPA published the partial deletions rule (which allows EPA to delete releases at portions of NPL sites, provided that deletion criteria are met) in the *Federal Register* on November 1, 1995. Previously, EPA's policy had been to delete releases only after evaluation of the entire site. However, deletion of entire sites does not communicate the successful cleanup of portions of those sites. Total site cleanup may take many years, while portions of the site may have been cleaned up and become available for productive use before cleaning has been completed at other portions of the site. Some potential investors or developers may be reluctant to undertake economic activity at a cleaned up portion of real property that is part of a site listed on the NPL. Therefore, EPA will delete portions of sites, as appropriate, and will consider petitions to do so.

**Status:** EPA signed and sent the partial deletion guidance to the Regions on April 30, 1996 (OERR Directive 9320.2-11). This guidance is aimed at mapping and tracking partial deletions at NPL sites in order to better portray the Agency's successes. It does not outline partial deletion procedures since they are the same as deletion procedures for total site deletion.

Region 6 published the first partial deletion Notice of Intent to Delete (NOID) in the *Federal Register* on April 11, 1996 (61 *FR* 16068). Regions 4 and 10 subsequently have published three more NOIDs. Region 10 published the first partial deletion notice on October, 29 1996 (61 *FR* 55751). EPA announced the second partial deletion in Region 10 on November 7, 1996. Region 10 expects that one more site will be partially deleted by December 1996. Regions 3, 4, 5, and 8 will continue to evaluate whether partial deletion is warranted. Region 6 will continue with the current process of deleting sites from the NPL. Region 6 expects to finalize four deletions in

FY96, propose two additional partial deletions, and propose full deletions at a number of sites. Region 2 is waiting on the Risk Assessment Completion Report.

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**Next Steps:** Many Regions have indicated that they have sites where they would like to delete portions. Headquarters has received several draft NOIDs for review. The Regions

should identify which sites they would like to partially delete and begin the process by submitting a NOID and Partial Deletion Data Collection Form to Headquarters.

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## **10. CONDUCT NATIONAL RISK-BASED PRIORITY SETTING**

### **10a. *Promote Risk-Based Priority Setting at Federal Facility Sites***

**Description:** Headquarters is developing draft guidance for the Regions which will address the role of risk and other factors (*e.g.*, cost, community concerns, environmental justice, and cultural considerations) in setting priorities at Federal facility sites. Guidance also will address DOD and DOE approaches to evaluating risks at sites, and the appropriate role of stakeholders in the process of setting priorities.

**Status:** Headquarters has obtained internal comments and has received comments from Federal agencies and States on the draft priority setting guidance. Regions have begun to implement the concept of risk-based priority setting at Federal facility sites. Regions 3, 9, and 10 have had considerable success setting risk-based priorities at Navy Superfund sites within their Regions. Consensus was reached among key players about which sites within a Region warranted near term attention and funding. Projects in Regions 9 and 10 were particularly noteworthy because they involved two Regions at the same time.

**Next Steps:** EPA will issue final guidance in the second quarter of FY97.

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### **10b. *Promote Risk-Based Priority for NPL Sites***

**Description:** EPA established a National Risk-Based Priority Panel in August 1995. The Panel is comprised of program experts representing all 10 Regions and Headquarters. With the exception of emergencies and the most critical removal actions, cleanup projects are funded in priority order based on Panel evaluations.



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**Status:** Projects are evaluated based on five criteria:

- ▶ Risks to humans;
- ▶ Ecological risks;
- ▶ Stability of contaminants;
- ▶ Contaminant characteristics; and
- ▶ Economic, social, and program management considerations.

During FY96, 42 projects totaling over \$276 million were funded in accordance with Panel recommendations. Over 100 projects were evaluated by the Panel. While some of these projects will carry over as FY97 needs, some will experience changing conditions requiring critical removal actions or successfully achieve enforcement agreements for action. By early FY97, the Panel had ranked projects approaching \$1 billion in cleanup costs. The Panel met in October 1996.

**Next Steps:** Since the approval of the operating plan in June 1996, new projects ready for funding in FY96 are subject to panel evaluation. Regional managers met in June 1996 to discuss refinements to the process for FY97. The Panel will reconvene in early spring 1997.

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## **II. ENFORCEMENT**

### **11. ORPHAN SHARE COMPENSATION**

**Description:** Under CERCLA's joint and several liability system, viable PRPs are potentially liable for the shares that may be attributable to insolvent or defunct parties who cannot contribute to the cost of cleanup (*i.e.*, the "orphan share"). In an effort to enhance fairness and encourage PRPs to enter into settlement agreements to perform cleanups, EPA announced in October 1995 that it would compensate performing parties for a limited portion of orphan shares in future cleanup settlements. The Agency stated that this compensation might be accomplished through forgiveness of past costs and projected oversight costs, subject to funding availability for the program. EPA has developed guidance to assist the Regions in applying this reform at particular sites.

**Status:** On June 3, 1996, EPA issued its "Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals" which provides for orphan share compensation where: 1) EPA initiates negotiations for remedial design/remedial action (RD/RA) or a non-time-critical (NTC)

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removal at an NPL site and a PRP or group of PRPs agree to conduct the RD/RA or NTC removal under consent; and 2) an “orphan share” exists at the site. The term “orphan share” refers to that share of responsibility which is specifically attributable to parties EPA has determined are 1) identifiable and potentially liable; 2) insolvent or defunct; and 3) unaffiliated with any party potentially liable for response costs at the site.

Regions may provide compensation as long as it does not exceed: 1) the orphan share; 2) the sum of all unreimbursed past costs and projected future oversight costs; or 3) 25% of the projected ROD remedy or NTC removal costs. Given the lapse in Superfund’s taxing authority, the implementation of the reform strikes a balance between preserving the Trust Fund and providing meaningful implementation of the reform because it forgives past costs and anticipated future costs rather than require new additional budget authority.

After the announcement of the reform in October 1995, EPA established a team of Headquarters staff to assist the Regions in implementing the reform. The team, in coordination with the Department of Justice (DOJ), worked closely with Regional staff to resolve issues on a site-by-site basis and to ensure consistent results. During FY96, the Agency offered to compromise over \$57 million to parties (providing they agreed to conduct the cleanup) in recognition of the orphan share at 24 Superfund sites across the United States. This achievement honors the commitment made by Administrator Carol Browner to offer at least \$50 million as part of settlement compromises at such sites in FY96. The reform also has reduced litigation and transaction costs by diminishing the arguments over who should bear the burden of the orphan shares.

For example, EPA compromised approximately \$1.5 million in recognition of the orphan share in a settlement of past cost claims and for cleanup work at the United Heckathorn site in Richmond, California. The 15 settling PRPs did not have to reimburse the Superfund for this amount because EPA determined that the long-term operators of this pesticide formulation plant were defunct and EPA would cover as much of this share as its current policy permitted. The settlement resolved EPA’s claims against the settling parties and ended long-standing and expensive private litigation. Additionally, the cleanup work to be done under the settlement will permit the City of Richmond to conduct its planned port deepening project. This is viewed by the City as a cornerstone of its economic redevelopment program.

**Next Steps:** The orphan share reform is a fundamental and permanent change in EPA’s enforcement process. In FY97, EPA will continue to bear a portion of the orphan share by compromising costs at sites where parties agree to perform cleanups under the Agency guidance issued in June 1996 within the bounds of existing appropriations and past and anticipated future oversight costs available for compromise. In addition, EPA will be

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considering possible changes to the guidance, including applicability to early *de minimis* settlers, within the bounds of these parameters.

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Deniz Ergener, OSRE, (202) 564-4233

## **12. SITE SPECIFIC SPECIAL ACCOUNTS**

**Description:** In October 1995, EPA announced its intention to encourage greater use of Special Accounts for settlement funds to be used for future response actions at Superfund sites and to ensure that interest earned by Special Accounts can be credited to these accounts and be available for future response actions at the sites in question.

**Status:** In March 1996, EPA issued a memorandum to its Regional Offices, encouraging them to use Special Accounts for settlement funds and advising them on the creation and use of these accounts. In June 1996, EPA reached agreement with the Office of Management and Budget (OMB) and the Department of the Treasury that interest earned by Special Accounts can be credited to these accounts and used by the Agency to carry out the settlement agreements. This means that EPA can retain and apply interest as well as settlement funds to clean up specific sites. In October 1996, OMB approved EPA's methodology for calculating Special Account interest. In late October 1996, EPA sent a memorandum to the Regions outlining the agreement with OMB, providing principal and interest balances in Special Accounts and providing directions on how to request these funds.

In FY96, the Regions established 23 Special Accounts, for a total of \$78 million. Overall, as of September 30, 1996, EPA has set up a total of 59 Special Accounts. The total balance of funds available in Special Accounts is \$261 million, representing \$226 million in principal and \$35 million in interest (interest through August 31, 1996).

The following examples illustrate the success of this reform in making site-specific Special Accounts available for response actions at Superfund sites:

- ▶ At the Love Canal Superfund Site in New York (Region 2), \$5 million in Special Account funds will be used for the remaining future work at the site; *i.e.*, revitalization of the site and completion of a health register.
- ▶ At Oronogo-Duenweg Superfund Site in Missouri (Region 7), EPA entered into a \$1 million settlement with an inactive PRP with limited resources. The use of a Special Account at this site allowed the Agency to settle with the PRP before its

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assets dwindled further and preserve the funds for future response actions at the site.

- ▶ At the Sharon Steel and Midvale Slag Superfund Sites in Utah (Region 8), most of the \$65 million in Special Account funds from a large settlement for these two contiguous sites has been applied to cleanup at the sites. In addition, the \$11 million in interest recently credited to the account will be applied to future cleanup activities at the sites.
- ▶ At the North Hollywood Operable Unit of the San Fernando Valley-North Hollywood Superfund Site in California (Region 9), five PRPs contributed \$1.8 million to a Special Account which EPA plans to use to pay the operating costs of the ground water treatment system at the site.
- ▶ At the Non-Populated Areas Operable Unit of the Bunker Hill Superfund Site in Idaho (Region 10), one PRP went bankrupt and EPA was able to recover \$8.75 million. Use of Special Account funds allowed the Region to expedite Fund-lead cleanup.

**Next Steps:** EPA will be providing general program and financial guidance to the Regions in the near future. The Agency will continue to monitor the success of this reform.

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### **13. EQUITABLE ISSUANCE OF UNILATERAL ADMINISTRATIVE ORDERS (UAOs)**

**Description:** Concerns have been expressed that EPA has issued unilateral administrative orders (UAOs) under section 106 authority to only a subset of the parties which have been identified for a particular site. In order to assure fair treatment of responsible parties, EPA is committed to ensuring that UAOs are issued to all appropriate parties following consideration of the adequacy of evidence of the party's liability, their financial viability, and their contribution to the site. Accordingly, EPA will identify (for internal management review purposes only), parties excluded from any order proposed to be issued and the basis for their exclusion. Regional staff will ensure that the Regional decision-maker receives sufficient information regarding who will and who will not receive the orders in the package sent to him or her for approval. Specifically, Regional staff will identify the total number of parties EPA has discovered at a site. Where Regional staff recommend that an order not include certain parties, they will include an explanation of the basis for such exclusion in the package.

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**Status:** On August 2, 1996, EPA issued a memorandum entitled, "Documentation of Reason(s) for Not Issuing CERCLA 106 UAOs to all Identified PRPs," reaffirming EPA policy to issue UAOs to the largest manageable number of PRPs after appropriate factors. The memorandum also establishes the formal procedures requiring Regional staff to document their reason(s) for proposing that certain PRPs be excluded from UAOs and procedures for situations where Regional staff propose not to issue UAOs to late-identified PRPs.

An example of implementation of this reform can be found at the Green River Disposal Site in Maceo, Kentucky. Several years ago, Region 4 issued a UAO to four PRPs to conduct an RI/FS and some removal activity at the site. This year, the Region issued a UAO for RD/RA not only to these four PRPs, but to six additional PRPs as well. Moreover, the Region considered issuing the UAO to several other parties. It ultimately decided not to include these other parties and, consistent with EPA's new policy, documented the reasons for non-issuance.

**Next Steps:** The Agency is establishing a process for ensuring that the Regions prepare the necessary documentation. During FY97, EPA will extend the documentation requirement to UAOs for removals and RI/FSs and will evaluate Regional implementation of the policy and the adequacy of associated documentation.

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#### **14. REVISED DE MICROMIS GUIDANCE**

**Description:** For very small volume waste contributors at a Superfund site ("de micromis" contributors), the cost of legal and other representation services may actually exceed the party's proportional share of response costs. Based on the extremely small nature of these parties' contributions, EPA issued a policy in 1993 stating that the Agency would not pursue these parties (See "Guidance on CERCLA Settlements With De Micromis Waste Contributors" (Office of Solid Waste and Emergency Response (OSWER) Directive #: 9834.17) (White/Diamond, July 30, 1993)). Where private parties pursued these very small contributors, EPA planned to enter into settlements providing contribution protection. This reform is intended to further discourage third party contribution litigation against these contributors and, where necessary, improve EPA's ability to resolve their liability concerns quickly and fairly. Through guidance, EPA is doubling the level previously identified for de micromis protection. Furthermore, if a de micromis party is threatened with litigation by private parties, EPA will settle with that party for \$0 in a settlement agreement that protects such parties from further litigation.

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**Status:** EPA has issued new guidance and models which reaffirm the Agency's policy not to pursue de micromis contributors and, when the threat of third-party litigation forces the Agency to conduct settlement negotiations with these parties, streamline and simplify the settlement process :

- "Revised Guidance on CERCLA Settlements with De Micromis Waste Contributors" (June 3, 1996) recommends cutoffs for eligibility at: 1) 0.002% (of total volume) or 110 gallons/200 pounds of materials containing hazardous substances, whichever is greater; or 2) 0.2% of total volume, where a contributor sent only municipal solid waste (MSW). EPA will settle with these parties for \$0 dollars. The guidance instructs the Regions to only offer a de micromis settlement where potentially qualifying parties: 1) have been sued by other PRPs at the site; 2) face the concrete threat of litigation from other PRPs at the site; or 3) have approached EPA seeking a settlement and the Region has determined that such parties have a reasonable expectation of facing contribution litigation.
- The "Informational Brochure for De Micromis Parties" (June 3, 1996) provides introductory information for potential settlors about the Superfund program and de micromis settlements.
- The "Model De Micromis Questionnaire" and "Sample Cover Letter for De Micromis Questionnaire" (June 3, 1996) is to be filled out by potential settlors, and contains a series of questions about the potential settlor's waste and its involvement with the site to assist EPA in determining eligibility for settlement. The sample letter introduces the recipient to the Superfund program, the site, and the concept of de micromis settlements, and invites the recipient to fill out the questionnaire.
- The "Model Section 122(g)(4) De Micromis Administrative Order on Consent" (June 3, 1996) provides model settlement language for administrative resolution of a de micromis party's liability.
- The "Model Section 122(g)(4) De Micromis Consent Decree" (June 3, 1996) provides model settlement language for the judicial resolution of a de micromis party's liability.
- The "Sample Cover Letter for De Micromis Settlement" (June 3, 1996) will accompany the de micromis settlement when it is sent out for signature by the settling party.

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- The “Model CERCLA Section 122(i) De Micromis Federal Register Notice” (June 3, 1996) is for use by EPA staff when providing the notice and comment required by section 122(i) of CERCLA.

During FY96, EPA witnessed many successes in its efforts to decrease pursuit of de micromis parties. Consistent with EPA’s 1995 new model consent decree for RDs/RAs, an increasing number of RD/RA consent decrees entered in FY 96 included an agreement by the private parties to waive their contribution rights against de micromis parties, including settlements at the Red Oak Landfill Site in Iowa and the Shepards Farm Site in North Carolina.

Where de micromis parties were pursued by private parties, EPA looked to get the smallest volume contributors out of Superfund litigation at the earliest possible opportunity. For example, at the Keystone Sanitation Landfill in Pennsylvania, EPA has entered into settlements with approximately 167 third and fourth party defendants who certified their de micromis status. At the Pollution Abatement Services Site in New York, EPA entered into an administrative order on consent providing protection to a local university.

**Next Steps:** EPA will continue to identify those sites where implementation of this reform is appropriate.

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## **15. ADOPTING PRIVATE PARTY ALLOCATIONS**

**Description:** In order to reduce transaction costs, EPA has committed to adopt private party allocations (including those that identify an orphan share) as the basis for settlement, where such allocations are approved by EPA. EPA also has agreed to compensate a portion of the orphan share, subject to the adequacy of funding.

**Status:** EPA established a national workgroup to determine the parameters and identify opportunities for implementation of this reform. The Agency has adopted private party allocations at several sites, including the Doepke Holliday Site in Kansas. At this site, EPA accepted the PRPs’ allocation scheme providing for settlement with a group of 66 parties, including two Federal agencies. As a result of this settlement, estimated at \$11

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million, the PRPs will perform the cleanup of the site and reimburse 100% of EPA response costs. EPA successfully avoided costly and time-consuming allocation disputes and third-party contribution litigation.

**Next Steps:** The workgroup determined that current Superfund policies are adequate for providing direction to implement the reform and, as a result, no new guidance is planned.

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## **16. REDUCED OVERSIGHT FOR CAPABLE AND COOPERATIVE PRPs**

**Description:** As the Superfund program has matured, parties have developed a considerable body of experience in conducting response activities at sites. Some not only have used this experience to perform high quality work, but have acted cooperatively with EPA throughout the cleanup and enforcement processes. In recognition of this development, and to promote further cooperation, EPA has reduced oversight at some sites already and will identify additional opportunities to discuss and reduce oversight plans with parties. Reduction of such oversight results in decreased transaction costs for EPA and cooperating parties, and should increase the incentives for settlement.

**Status:** A six-page Directive, “Reducing Federal Oversight at Superfund Sites with Cooperative and Capable Parties,” (OSWER #9200.4-15) (July 31, 1996) presents factors for the Regions to consider when determining if a PRP is cooperative and capable, and thus eligible for reduced oversight. The Directive encourages Regions to discuss oversight with stakeholders, acknowledge those parties that have already received reduced oversight, and discuss future oversight plans. The Directive also provides some examples of how oversight can be reduced, but recognizes some situations where additional reductions in oversight may not be warranted (*e.g.*, highly complex sites or cleanups with substantial community involvement).

Regions have identified approximately 100 sites where reductions in oversight of ongoing work for cooperative and capable PRPs have occurred in the past or will occur in the future, significantly reducing costs at some of these sites. For example, at the LaVaca Bay site, Region 6 stopped using an oversight contractor for technical review since this activity was already being provided by a Federal/State Technical Coordination Team. Furthermore, Region 6 plans to reduce field work oversight at the site by minimizing split samples and by performing lab audits and overseeing field sampling activities only when needed.



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**Next Steps:** Regions will notify cooperative parties that they have already received reduced oversight or will receive reduced oversight. Regions will be encouraged to provide PRPs with an up-front estimate of contractor costs for oversight.

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### **III. PUBLIC INVOLVEMENT**

#### **17. PILOT REMEDY SELECTION BY SELECTED STATES AND TRIBES**

**Description:** The goal of this reform is to provide States with an increased role in remedy selection at NPL sites whenever possible. EPA and selected States would enter into agreements through which those States would conduct the remedy selection process, consistent with applicable law and regulations, at certain NPL sites. Using remedy selection pilots, participating States will supervise the remedy selection process with minimal EPA oversight or involvement. This would give the States significantly more control than usual over NPL site cleanups.

**Status:** Information has been shared regarding the Regions' current efforts in shifting remedy selection to the States. Four Regions have begun to give States the authority to recommend the preferred alternative remedies. However, the NCP still requires EPA to concur on the final ROD. Regions 5, 6, and 10 are evaluating changes that will occur when States assume a more active role in remedy selection and are looking to further expand the role of States in selecting remedies. During FY96, Region 5 completed one State remedy selection pilot. Region 6 has tentatively identified a few sites for State remedy selection. Region 9 issued two memoranda concerning their experiences with pilot State selection of remedies and is considering doing a new State remedy selection pilot. Region 10 is examining various Regional pilot programs to identify relevant guidance/policy criteria. The national workgroup has developed criteria and a process to select new pilots and monitor and assess the results.

**Next Steps:** By Winter 1997, EPA will develop "lessons learned" for past and ongoing pilots and identify new pilots.

**Contact:** Sharon Frey, OERR, (703) 603-8817

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## 18. PILOT COMMUNITY-BASED REMEDY SELECTION PROCESS

**Description:** Through this initiative, EPA will explore the use of more “consensus-based” approaches that involve community stakeholders in the Superfund remedy selection process. This effort is intended to empower local citizens and other stakeholders to achieve mutually acceptable remedies that meet statutory and regulatory requirements and make common sense. The goals of this reform are to catalog Regional experiences and develop guidance highlighting options for using consensus-based approaches during remedy selection.

**Status:** As a result of cooperative work between EPA, DOE, the Tennessee Department of Environment and Conservation, and the significant involvement of the affected community at the Lower East Fork Poplar Creek site in Oakridge, Tennessee, \$160 million in cleanup costs were saved. Community participation in the development of cleanup alternatives and remedy selection resulted in this future cost reduction. This project demonstrates the value of community participation in the remedy decision-making process.

Regions have identified other sites where they are using or plan to use a consensus-based approach to select a remedy for a site. One Region is implementing a workshop training program that identifies communities where the Public Awareness Workshop training would be beneficial and familiarizes sites in the Region with the concept of Community Advisory Groups (CAGs).

**Next Steps:** The Agency plans to analyze the Superfund program’s experiences to date. Using a case study approach, a Headquarters/Regional workgroup will look at sites to identify both positive and negative factors that affect community understanding of cleanup options and participation in cleanup decision-making. The workgroup will evaluate these site-specific experiences after they are gathered, and develop guidance by December 1996. This effort will begin the process of identifying tools and techniques that can be used by the Superfund program to successfully involve local citizens and other stakeholders in the remedy selection process.

**Contact:** Caroline Previ, OERR, (703) 603-8704

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## 19. ESTABLISH SUPERFUND OMBUDSMAN IN EVERY REGION

**Description:** This initiative was undertaken by a joint Headquarters/Regional workgroup. The goal of the initiative was to place an Ombudsman in each Region to serve as a point of contact for the public and help resolve stakeholder concerns.

**Status:** Headquarters and the Regions were equal partners in the development of the mission statement, position description, process description, and implementation and evaluation plans. The Regions have adapted the generic products to meet their needs, thus allowing for Regional variation but retaining national consistency. On June 4, 1996, EPA Administrator Carol Browner announced that all 10 Regions had nominated an Ombudsman by the prescribed date of March 31, 1996.

The workgroup attended the first EPA Ombudsman Conference and Training Seminar. The purpose of the conference and training was to train all Regional Ombudsmen in interest-based negotiation, facilitation, and other skills the Ombudsmen need to do their jobs. The Ombudsmen began accepting cases in June of 1996.

There have been a number of cases brought to the Superfund Regional Ombudsmen even in the short time they have been active. Of these, two became criminal cases. Five of the Regions have installed a toll-free number to accommodate calls to the Superfund Regional Ombudsman. The other Regions are investigating the feasibility of toll-free numbers.

Collectively, since June 1996, the Superfund Regional Ombudsmen answered a total of 159 calls in FY96. Of these calls, the Ombudsmen referred 70 calls to another EPA office or to another agency and no further action was required. Of the remaining calls handled by the Ombudsmen, 87% were appropriately handled and resolved to the mutual satisfaction of the parties involved, while 13% of the calls are still in the process of being handled by the Ombudsmen.

**Next Steps:** The workgroup will continue to provide assistance to the Regional Ombudsmen as needed and will also perform periodic evaluations. Additionally, all Regions plan to better define the role and responsibility of the position as the position evolves. Regions are in the process of identifying lessons learned from the period of June through September 1996. The Superfund Regional Ombudsmen will have another training and conference in early 1997 to further refine their negotiation, facilitation, and conflict resolution skills.

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**Contacts:** Kim L. Fletcher, OERR, (703) 603-8922

Jack Winder, OSRE, (202) 564-4292

Ombudsmen contacts:

- ▶ Region 1 - John Smaldone, (800) 762-5727
- ▶ Region 2 - George Zachos, (888) 236-7626
- ▶ Region 3 - John Armstead, (800) 438-2474
- ▶ Region 4 - Ron Wilson, (800) 321-6621
- ▶ Region 5 - Doug Ballotti, (800)321-6621
- ▶ Region 6 - Eddie Sierra, (800) 533-3508
- ▶ Region 7 - Craig Smith, (800) 223-0425
- ▶ Region 8 - Rob Henneke, (800) 227-8917, Ext. 6734
- ▶ Region 9 - Don White, (415) 744-1022
- ▶ Region 10 - Michelle Pirzadeh, (206) 553-1775

## **20. IMPROVE COMMUNICATION WITH SUPERFUND STAKEHOLDERS**

**Description:** Through this initiative, EPA is using electronic tools, such as the Internet, multi-media computers, and other electronic means, to increase communication among all Superfund stakeholders and improve access to Superfund information.

**Status:** EPA activated the Headquarters Superfund Homepages ([www.epa.gov/superfund](http://www.epa.gov/superfund) and [es.inel.gov/oeca/osre.html](http://es.inel.gov/oeca/osre.html)) on the Internet in Spring 1996, as a cooperative effort between OSWER and the Office of Site Remediation Enforcement (OSRE).

All of the Regional offices have developed homepages which will include information on Regional Superfund programs, such as Superfund site lists, site-specific information, and links to State Superfund activities. Region 3 is planning to expand site-specific information on the web site and allow for discussion on site initiatives among multiple parties across the web. Region 5 also will place site narratives on the web and is coordinating the Regional Superfund homepage activities with national homepage activities to avoid duplication. They will canvas the Regional Superfund programs to determine what information is available and useful, and develop mechanisms for discourse. Regions 6 and 10 have started to make information available through bulletin boards. Region 7 has included site summaries and reference to the Technical Outreach Services to Communities (TOSC) program supplements the Technical Assistance Grant (TAG) program. Region 8 intends to provide a main index for Geographic Information System (GIS) maps covering all sites. Region 9 has included fact sheets on Superfund subjects. Region 10 offers downloading of RODs and ground water data.

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**Next Steps:** A workgroup involving Headquarters and the Regions will develop procedures for consistency of electronic information and identify sites and stakeholder groups to use as pilots for sharing electronic information.

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## ***SUPERFUND REFORMS ROUND TWO***

### **I. ENFORCEMENT**

#### **1. PRP SEARCH PILOTS**

**Description:** The primary goal of the PRP search pilots is to determine whether the time line proposed in H.R. 4916, a 1994 bill known as “the Superfund Reform Act of 1994” (SRA), is achievable through completion of early PRP searches. In addition, EPA is evaluating new ideas on information-sharing with already identified PRPs and new techniques for identifying additional parties earlier in the process.

**Status:** In 1995, EPA convened a national workgroup of PRP search specialists and conducted a national conference on PRP search procedures to share information and brainstorm innovative ways to obtain and document evidence earlier in the process, including greater cooperation and information exchange with PRPs. Based on the results of the national conference and the insights gained from the Regional pilots, EPA has begun to expand and update existing PRP search guidance and to reorient the PRP search process to facilitate expedited settlements and allocation of responsibility. To assist with the implementation of this reform initiative, EPA provided training on early PRP search procedures for Regional staff, State officials, and contractors following the national conference.

Additionally, EPA developed resource packages for Regional pilot participants. The packages included the following materials:

- ▶ New sample 104(e) information request letters (*e.g.*, separate letters for small businesses, individuals, and large entities);
- ▶ A sample newspaper advertisement seeking additional information regarding PRPs;
- ▶ The Agency's 1988 and 1991 guidance and sample language on the use and issuance of administrative subpoenas;
- ▶ Tips on establishing a public repository for PRP search information;
- ▶ The use of Rule 27 of the Federal Rules of Civil Procedure to take depositions before a complaint is filed; and
- ▶ Guidance on how to use statements taken by civil investigators.

EPA identified 15 candidate sites where PRP searches had just begun or were about to be initiated in Spring 1995. To test the relevant provisions contained in the SRA, EPA set up

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each pilot search to conform as nearly as possible to a time line that will lead to notification of potential *de minimis* parties within 12 months after the search starts and notification of all other parties within 18 months. Searches are ongoing at six of the 15 sites. When the majority of pilot searches have been underway for 18 months, EPA will evaluate whether or not these time lines are achievable. Additionally, each pilot is testing one or more of the streamlining techniques identified during the national conference.

Piloted techniques include: exploring the use of newspaper advertising to solicit information about PRPs from the public; conducting early interviews of parties to obtain information and minimize the need for multiple rounds of requests; early release of PRP information to the public; and gathering information from PRPs regarding the activities of other parties.

**Next Steps:** In FY96, the Agency began to revise the existing PRP Search Manual to send a clear message that the goal of the PRP search is broader than identification of a few parties to conduct the cleanup. The manual will also reflect the lessons learned from: the PRP search conference; reform pilots (PRP search, expedited settlements, and allocations); and orphan share reform. The draft revised PRP Search Manual also includes: suggested roles for PRPs who desire to work with EPA during the PRP search; a compilation of Regional PRP search “tools” for more efficient information-gathering and information-sharing; and an incorporation of relevant Superfund Reforms and other Superfund Enforcement policy and guidance. The draft Manual is currently undergoing Regional and Department of Justice review and comment. EPA expects to finalize the revised PRP Search Manual in 1997. EPA also has developed extensive enhancements in its CERCLIS 3 database currently being piloted by Regions 2 and 5 which should enhance Regional information-sharing.

Other actions EPA tentatively plans include Regional training/information-sharing on topics such as ability-to-pay and orphan share determinations as they relate to PRP searches. A national conference of EPA, State and external stakeholders also may be held in 1997 to facilitate information sharing on PRP searches which support Superfund Reforms.

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## 2. EXPEDITED SETTLEMENTS

**Description:** EPA recognizes that early settlements reduce transaction costs for all parties. Therefore, in 1995, EPA began piloting expedited settlement procedures at several sites where the PRP search is substantially complete. At these sites, EPA is settling earlier (*i.e.*, pre-ROD) with *de minimis* contributors and with certain PRPs who have demonstrated a limited ability to pay response costs. EPA is developing early response cost estimates, a premium guidance to facilitate early *de minimis* settlements; a policy for making determinations about a PRP's ability to pay; model information request clauses; model settlement language; and other tools to expedite such settlements. As the next step, the PRPs at these pilot sites will be given the opportunity to “nominate” other parties who they have a reason to believe also are responsible parties at the site.

**Status:** EPA has developed different tools to assist with the settlement of *de minimis* and ability to pay parties under this reform. These tools include a guidance document, two models, and a fact sheet, which are described below:

- **“Overview of Ability-to-Pay Guidance and Models,”** May 1995 - This fact sheet identifies and describes documents that are relevant to Superfund ability-to-pay analyses. It summarizes both: 1) general policy documents that require or provide for consideration of the ability-to-pay of Superfund parties; and 2) documents that describe methods to determine ability-to-pay settlement amounts (*e.g.*, the ABEL computer model).
- **“Standardizing the *De Minimis* Premium,”** July 7, 1995 - This guidance document establishes presumptive premium figures, describes the most likely bases for deviating from such figures, and recommends a method for effectively communicating the premium determination process to the *de minimis* settlors and other interested parties at a site.
- **Revised Model CERCLA Section 122(g)(4) *De Minimis* Contributor Consent Decree,** September 29, 1995 - The model, which supersedes the October 19, 1987 interim model, provides guidance for EPA and DOJ staff when negotiating *de minimis* contributor judicial consent decrees.
- **Revised Model CERCLA Section 122(d)(4) *De Minimis* Contributor Administrative Order on Consent,** September 29, 1995 - The model, which supersedes the October 19, 1987 interim model, provides guidance for EPA and DOJ staff when negotiating *de minimis* contributor administrative orders on consent.

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To enhance the Regions' capacity to review claims of ability-to-pay problems, the PRP Search national conference in February 1995 included sessions addressing methods of making ability-to-pay determinations. Additional resources were made available to the Regions to increase their financial analysis capacity.

In FY95, EPA successfully completed four expedited settlements, resulting in the release of 236 *de minimis* parties from the Superfund process prior to the ROD being signed. The four sites were Solvents Recovery Service in Connecticut, Tri-Cities Barrel in New York, Arcanum Iron & Metal in Ohio, and Hanson Container in Colorado. At two of the four sites, EPA settled early with four *de minimis* parties based upon their inability or limited ability to pay their proposed share of the cleanup costs. Additionally, all PRPs associated with the pilot sites were provided the opportunity to identify other parties to the process. EPA identified additional parties in a variety of ways, including the PRP Steering Committees and/or general notice letters and meetings with PRPs to inform them about the nominations opportunity. EPA developed a short sheet providing guidelines for nominating additional parties to the process which was used to implement this portion of the reform.

In FY96, EPA negotiated several pre-ROD *de minimis* settlements that will ultimately result in protection of 264 small volume waste contributors when the public comment periods end. A settlement at the Tulalip Landfill in Marysville, Washington finalized this fiscal year helped 187 parties resolve their Superfund liability. In addition, EPA's efforts to streamline evaluations of claims from PRPs with limited ability to pay their CERCLA liabilities led to a number of ability-to-pay settlements at Superfund sites. For example, this streamlined process resulted in EPA settling with four PRPs at the XXKEM Company Site in Toledo, Ohio. Without such a process, EPA may not have been able to settle with these parties who claimed a limited ability-to-pay in the short time provided by the large *de minimis* settlement.

**Next Steps:** In FY97, the Agency will continue to emphasize the importance of removing small waste contributors from the Superfund enforcement process with minimal transaction costs. Several expedited settlement pilots are ongoing.

EPA also intends to issue four policy documents regarding ability-to-pay determinations in Superfund settlements. EPA will issue the first three policy documents, addressing general issues that apply to all Superfund ability-to-pay settlements and issues specific to ability-to-pay determinations for individuals and small businesses, as a package. The Agency also will issue the fourth policy document, addressing ability-to-pay issues

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specific to municipalities, at a later date. EPA also may develop a computer-based training program to support the implementation of the policy documents.

**Contacts:** Kathleen Backer, OSRE, (202) 564-4209 (*De minimis* issues)  
Bob Kenney, OSRE, (202) 564-5127 (Ability-to-pay issues)

### 3. ALLOCATION PROCESS

**Description:** The Allocation Pilots test a fundamentally different approach to the allocation of Superfund costs. Under this approach, PRPs may settle their liability based upon their “share” of cleanup costs, assigned by a neutral party known as an allocator. The allocator is selected by the PRPs and EPA (as representative of the orphan share), and will conduct a non-binding out-of-court allocation process. The allocator assigns shares of responsibility to the PRPs based on a number of equitable factors. EPA will then offer to settle with parties for their allocated share. Under this scheme, EPA expects to be responsible for 100% of the orphan share, which includes the shares of parties which are defunct or insolvent. In addition, EPA expects to be responsible for the shares of non-settlers. By contrast, at many other sites, EPA often settles with PRPs who are capable of performing the cleanup, who then routinely resort to expensive contribution litigation and other lawsuits to resolve allocation disputes among the PRPs.

The Allocation Pilots are patterned after the allocation process proposed in H.R. 4916, the “Superfund Reform Act of 1994 (SRA)”. Even though that bill was not passed, the Agency believed there were: 1) benefits to “test driving” an allocation provision; and 2) evaluating the impact an allocation process has on settlement.

**Status:** To date, EPA offered to pilot the allocation process at 12 Superfund sites. Two of the sites reached settlement outside the allocation process, leaving 10 active pilot sites. The Allocation Pilots are at various stages. At several sites, EPA and PRPs hired the allocator and are now taking positions on the respective shares of the parties. At other sites, the parties have only recently selected the allocator. At the remaining sites, the Agency is either following up on PRP nominations for adding parties into the allocation or completing a *de minimis* settlement before selecting the allocator.

Although the pilots are not yet complete, a great deal has been learned about the strengths and weaknesses of the SRA allocation provisions and of the allocation process in general. In sum, EPA has learned that the SRA allocation provisions would have been difficult to implement and may have had unintended consequences. For example, projected time frames for completing the nominations process and hiring of the allocator were

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insufficient to address the myriad issues raised by parties. Moreover, while the SRA allocation process identified the allocator as the party to resolve issues, the parties in the process were much more comfortable resolving issues themselves. An unintended consequence of the allocation scheme is that any party can undermine the whole process by treating the allocation as equivalent to litigation. At several sites, parties presented numerous requests for information, requested depositions, and nominated thousands of parties with little supporting information other than a name in the phone book. Moreover, there have been instances where almost all the parties sought settlement, but one party insisted on going through the full allocation process. These examples indicate that an allocation process may increase, not decrease, transaction costs on all parties.

EPA also has learned that a formal allocation process may provide a useful structure, but flexibility is necessary to meet site-specific circumstances. At several of the pilot sites, the allocation parties preferred to select the allocator by consensus rather than invoke formal voting procedures envisioned in the SRA. At another site, the parties waived the nomination stage because there was no evidence of additional PRPs, saving significant time and effort. In addition, at several of the original pilot sites where EPA offered the allocation process, the parties chose to enter into settlement negotiations immediately rather than enter the pilot because: remedy costs were relatively small (compared to expected costs of the allocation process), the expected orphan share was not significant, or other Agency initiatives (*e.g.*, orphan share) provided a sufficient basis for settlement.

Following is greater amplification of lessons learned about the allocation process:

- **Identifying additional PRPs through a nominations process requires collaboration (and trust) between Agency and PRPs.** The nominations stage of the pilot has proven to be very important to both the PRPs and the Agency. For the PRPs, the nominations period is a valuable opportunity to identify additional allocation parties who may be assigned shares by the allocator. For the Agency, it is a valuable vehicle for obtaining additional information about the parties linked to the site and making the necessary determinations about the nominated party's status (*e.g.*, whether the party is eligible for *de minimis* or ability-to-pay settlements). To discourage PRPs from making frivolous nominations, the SRA allocation process included a fee-shifting provision. Under the fee-shifting provision a nominating PRP pays the costs incurred by the parties it nominated (but who EPA believes are not liable) if the nominee is subsequently assigned a zero share by the allocator. At several of the sites, it was necessary to employ the fee-shifting arrangement to limit "phone book" nominations. At other sites, it has not been necessary to use this tool because the Agency and PRPs have been working together to identify additional parties and the parties agreed that EPA would be the final decision-maker for including additional parties in the process.

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- **Allocator selection, hiring, and payment process may need revision.** The Agency has learned that the allocator selection and hiring process set forth in the SRA requires considerable time and resources. In practice, at sites with a small number of PRPs, parties preferred to use a convening process to select the allocator by consensus and by personal interviews, rather than use the mandatory voting procedures outlined in the SRA. At those sites where there are a greater number of PRPs, it still may be appropriate to select the allocator through the voting process. Also, some parties (in particular, small parties) have indicated that they do not want to participate in this phase of the allocation process (*i.e.*, they do not want to incur transaction costs), but they do want to participate in the later settlement based on the allocator's report. In these cases, the parties should not have to participate in the allocation process, although they still may be assigned a share by the allocator.

Some PRPs have also questioned the appropriateness of EPA (since the Agency is a party in the allocation) solely contracting for the allocator services. Finally, from the Agency's perspective, greater flexibility will need to be introduced into Federal contracting and other administrative procedures to support an allocator selection/hiring process.

- **Resolution of issues during the allocation process benefits the parties and expedites settlement.** An allocation process can be used by the parties to resolve issues, thereby narrowing the issues going to the allocator for a decision. Specifically, the process provides an opportunity for parties to identify shares prior to issuance of the allocator's report. For example, at one site, the parties identified the individual shares of the generators through a private party allocation. Because the Agency accepted that private party allocation, the allocator's role was narrowed to consideration of only the division of shares between the generator group and the owner/operator group. At another site, EPA and the parties agreed that they would resolve several issues through a collaborative effort and that the allocator would consider only those issues if unresolved by the parties. By narrowing the issues before the allocator, settlement is expedited and parties incur less transaction costs.
- **Settlement before the allocator's report.** At several sites, once EPA convened the allocation process, PRPs inquired about the possibility of settlement prior to initiation of the allocation if the Agency was willing to fund the orphan share. EPA's response has been different depending on the number of parties requesting the settlement, and

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assurances that the settlement would facilitate cleanup activities. Where EPA has settled with less than all the allocation parties, parties who choose not to settle remain in the allocation and are afforded the opportunity to settle later based on the share assigned by the allocator. If all parties settle, the allocation ceases.

A recent example of a settlement is at the Old Southington Landfill pilot site in Region 1. There, with the assistance of mediators (in addition to allocators), all of the participants in the allocation process reached an agreement whereby the parties (with EPA funding the orphan share) will pay their negotiated share of response costs. Importantly, this settlement provides for the immediate cleanup of the site. This agreement enables all settling parties to cap their exposure, while significantly reducing transaction costs. Critical to achieving this result were two components: 1) the government's willingness to fund the orphan share of cleanup costs and; 2) the culture of collaboration established among the pilot participants (which then fostered a constructive, problem solving approach to resolving numerous impediments to settlement.)

**Next Steps:** The Agency will continue to implement and evaluate the allocation process at pilot sites.

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## **II. ECONOMIC REDEVELOPMENT**

### **4(a & b). BROWNFIELDS INITIATIVE**

**Description:** The Brownfields Economic Redevelopment Initiative is a comprehensive approach to empowering States, local governments, communities and other stakeholders interested in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields. EPA is addressing implementation of this initiative through a Brownfields Action Agenda. The Action Agenda is a collection of bold strategies that will continue to evolve as the Brownfields Initiative matures. To date, activities have focused on four main categories: 1) implementing Brownfields Pilot programs in cities, counties, towns and Tribes across the country; 2) clarifying liability and other issues of concern for lending institutions, municipalities, prospective purchasers, developers, property owners and others; 3) establishing partnerships with other EPA programs, Federal agencies, States, cities, and

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stakeholders; and 4) promoting community involvement by supporting job development and training activities linked to brownfield assessment, cleanup, and redevelopment.

#### **4a. *Brownfields Pilot Projects***

**Status:** By the end of FY96, EPA announced the selection of 76 Brownfields Pilots to be funded through cooperative agreements at up to \$200,000 each for a two-year period. The cooperative agreements for all pilots are subject to negotiation. Of the 76 Pilots, 39 are national pilots selected and funded through Headquarters; while 37 are Regional pilots selected and funded through the 10 Regional offices. EPA intends the pilots to perform the following: provide redevelopment models; direct efforts toward the removal of regulatory barriers; and facilitate coordinated public and private efforts at the Federal, State, and local levels.

EPA has signed Memoranda of Understanding (MOU) with other Federal partners to coordinate issues related to brownfields redevelopment and to leverage additional opportunities. In FY96, MOUs were signed with the Department of Housing and Urban Development, Economic Development Administration, and the Departments of Labor and Interior.

EPA conducted a Brownfields Pilot National Workshop in Washington, D.C. in February 1996 and a Brownfields National Conference in Pittsburgh, Pennsylvania in September 1996. A variety of guidances and other initiatives announced by the Agency have affected the liability aspects of the Brownfields Action Agenda. EPA also archived over 27,000 sites from the Federal Superfund Inventory ) CERCLIS.

**Next Steps:** EPA will announce an additional 25 pilots in FY97 as well as provide guidance and funding to capitalize revolving loan funding programs for cleanup activities of the first 29 pilot recipients (*i.e.*, those receiving assessment pilot funding prior to 1996). EPA also will initiate expansion of site assessments. The Agency will support State voluntary cleanup program development. EPA will announce additional new Action Agenda commitments beginning in calendar year 1997. EPA will coordinate support for the efforts of the Federal Interagency Working Group on Brownfields.

**Contact:** Linda Garczynski, OSWER, (202) 260-1223

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#### **4b. *Community Outreach***

**Status:** Each EPA Region has established a Brownfields coordinator position to oversee Brownfields pilots and initiate other Brownfields activities. EPA also has assigned five staff members to cities through inter-governmental personnel assignments to assist in addressing the Brownfields redevelopment challenges presented at the State and local levels.

EPA, with the National Environmental Justice Advisory Council, co-sponsored a series of public dialogs in summer 1995 related to urban revitalization and Brownfields. In conjunction with the Common Sense Initiative (CSI), EPA has identified brownfields pilots in several cities that provide opportunities to concentrate on the impact of particular industrial sectors on brownfields. In particular, several brownfields pilots have been identified for linkage with the CSI "Iron and Steel Sector."

EPA is promoting and fostering job development and training through partnerships with brownfields pilot communities and community colleges. EPA is working with the Hazardous Materials Training and Research Institute to expand environmental training and curriculum development. In November 1995, EPA hosted a workshop in Baltimore, Maryland to assist community colleges from 17 Brownfields pilot communities in developing environmental job training programs. In July 1996, EPA held a second workshop in St. Louis, Missouri with additional community colleges from more recently selected Brownfields pilot communities. Through a cooperative agreement with Rio Hondo Community College, EPA has established an environmental education and training center to provide comprehensive technical-level training. EPA and the National Institute of Environmental Health Sciences (NIEHS) are working to coordinate minority worker training grant recipients with Brownfields pilot city activities.

**Next Steps:** EPA will continue outreach to stakeholders on Brownfields involvement. Technical assistance will be provided through existing partnerships and pilots with other Federal agencies and non-governmental organizations.

**Contact:** Linda Garczynski, OSWER, (202) 260-1223

#### **4c. REFINING CERCLIS**

**Description:** EPA has refined the process for registering and maintaining site information in CERCLIS (EPA's automated inventory of potential or confirmed hazardous waste sites addressed under the Federal Superfund Program) through archiving. Of the 40,500 sites



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that have come to the attention of Superfund, less than 5% have made it onto the final NPL. The perceived potential threat of Superfund liability historically remained for sites not listed, however, even if evaluated and determined not to warrant NPL placement since they were still listed in the Agency's CERCLIS inventory.

In response to growing concerns about this unintended stigma associated with sites listed in CERCLIS, EPA introduced the CERCLIS archiving effort in early 1995 as part of the Agency's Brownfields initiative on economic redevelopment. Specifically, CERCLIS archiving is an ongoing effort that addresses this stigma by removing those sites with no further interest under the Federal Superfund Program from the CERCLIS inventory.

**Status:** EPA initially archived 24,000 sites from the CERCLIS inventory in February 1995. EPA and the States had screened these 24,000 sites under Superfund's Site Assessment Program and found them to be of no further Federal Superfund interest.

In June 1996, EPA provided guidance identifying types of sites eligible for archiving, and initiated efforts to research those sites remaining in the CERCLIS inventory and make archive decisions as appropriate. These actions, combined with completions of ongoing assessment work, have yielded over 27,000 sites archived from CERCLIS through FY96.

**Next Steps:** The archiving effort is a continuous process ) as more sites are entered into CERCLIS and/or screened out, the CERCLIS and archive lists will change. EPA anticipates archiving over 1,000 additional sites from CERCLIS per year over the next several years based on completing Superfund activities at existing and new sites.

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#### **4d. CLARIFYING NPL SITES**

**Description:** Listing property on the NPL may affect the value of that property and the surrounding area ) whether or not all of the property or adjacent property is contaminated. In order to facilitate the transfer, development or redevelopment of property or portions of property determined to be uncontaminated, EPA (as a part of its Economic Redevelopment initiative) is developing a program which provides its Regions with the flexibility to clarify the areas of sites determined to be contaminated or uncontaminated. The Regions have already initiated partial deletions of several NPL sites.

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Another product of this initiative will be guidance which describes the factual basis on which EPA may issue assurances that areas of sites are not contaminated and the appropriate consultation and coordination that will accompany these assurances. As part of this initiative, EPA will also develop a tool (*e.g.*, Soil Screening Guidance) to identify portions of sites that do not warrant Federal attention. In addition, EPA is considering,

on a pilot basis, deletion of remediated parcels of a closing military base that is listed on the NPL so that the parcel may be returned to productive use. Complementing this effort is the next initiative which includes clarifying Federal liability for prospective purchasers.

**Status:** The partial deletion guidance was signed and sent to the Regions on April 30, 1996 (OERR Directive 9320.2-11). This guidance does not outline partial deletion procedures since they are the same as deletion procedures for total site deletion. This guidance is aimed at mapping and tracking partial deletions at NPL sites in order to better portray the Agency's successes.

Region 6 published the first NOID in the *Federal Register* on April 11, 1996 (61 *FR* 16068). Regions 4 and 10 subsequently have published three more NOIDs. Regions 3, 4, 5, and 8 will determine if partial deletion is warranted. Region 6 will continue with the current process of deleting sites from the NPL. Region 6 expects to finalize four partial deletions in FY97, propose two additional partial deletions, and propose full deletions at a number of sites. Region 2 is waiting on the Risk Assessment Completion Report. Deletions of remediated parcels at Federal facilities have not yet taken place.

EPA issued final soil screening guidance in May 1996. The soil screening levels established in the guidance serve as a basis for partial deletions of NPL listings. They also will complement the ongoing SACM initiative and provide the framework for other cleanup efforts, such as RCRA corrective actions, voluntary cleanup programs, and State/Tribal cleanup programs. Additionally, the development of soil screening levels will be useful in streamlining baseline risk assessment.

**Next Steps:** The partial deletions portion of this reform is currently being implemented as Reform 9 (*i.e.*, Delete Clean Parcels from the NPL) in the third round of Superfund reforms.

**Contact:** Terry Keidan, OERR, (703) 603-8852

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#### 4e. REMOVING LIABILITY BARRIERS

**Description:** EPA is identifying options and developing tools to remove liability barriers to the cleanup and redevelopment of contaminated properties, giving prospective purchasers, lenders, and property owners more assurances of a safe investment. The Agency also is developing guidance to define the Federal, State, and Tribal roles at sites with redevelopment potential, as well as of specific parties (*e.g.*, lenders and prospective purchasers) associated with contaminated properties.

**Status:** EPA issued three guidance documents in 1995 and one document in 1996 that provide some assurance to prospective purchasers, certain lenders, and certain property owners that they do not need to be concerned with Superfund liability. The guidances, as described below, clarify EPA's intentions toward certain parties as a result of their association with and activities at a site:

- **“Guidance on Agreements with Prospective Purchasers of Contaminated Property,”** May 1995 (<http://www.epa.gov/swerosps/bf/gdc.htm>; 60 *FR* 34792 (July 3, 1995)) ) The new guidance supersedes the portion of the 1989 guidance dealing with prospective purchasers and allows the Agency greater flexibility in entering into agreements which provide a promise by the United States not to sue the prospective purchaser for contamination existing at the time of purchase and provides contribution protection. The new guidance allows for a broader application of prospective purchaser agreements (PPAs) by expanding the universe of eligible sites and allows the use of such agreements when the agreement results in a substantial indirect benefit to the community in terms of cleanup, creation of jobs, and development of property. A model prospective purchaser agreement also was issued to streamline the process.
- **“Policy Towards Owners of Property Containing Contaminated Aquifers,”** May 1995 (<http://es.inel.gov/oeca/osre/950524-1.html>, <http://www.epa.gov/swerosps/bf/gdc.htm>) ) The policy describes EPA's exercise of enforcement discretion to not take enforcement actions under CERCLA against owners of property above aquifers contaminated by hazardous substances resulting from migration outside the property. Additionally, if the owner is being sued or threatened to be sued by a third party who caused the contamination, EPA will consider providing contribution protection through a settlement with the owner.
- **“Policy on CERCLA Enforcement Against Lenders and Government Entities that Acquire Property Involuntarily,”** September 1995 (<http://www.epa.gov/swerosps/bf/gdc.htm>, NTIS # PB95-234498) ) The policy is a joint statement of intent

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from EPA and DOJ to apply as guidance the provisions of the invalidated rule on Lender Liability under CERCLA, 57 *FR* 18344 (Apr. 29, 1992). Specifically, the policy advises Regional staff to use the rule and its preamble as guidance in determining when EPA should exercise its enforcement discretion and not take an enforcement action under CERCLA against a lender or a government entity. [NOTE: Legislation passed as part of the Omnibus Appropriations Bill for FY97 (the Asset Conservation, Lender Liability and Deposit Insurance Protection Act, sections 2501 to 2505) contains statutory provisions which are based substantially on the 1992 rule and address the CERCLA liability of lenders, fiduciaries, and government entities who acquire property involuntarily. See Pub. L. 104-208.]

- **“Policy on the Issuance of Comfort/Status Letters,”** November 1996 ) The policy is intended to respond to requests from parties for some level of comfort that if they purchase, develop, or operate on brownfields property, EPA will **not** pursue them for the costs to clean up any contamination resulting from the previous use. The policy contains four sample comfort/status letters which address the most common inquiries for information that EPA receives regarding contaminated or potentially contaminated properties. The sample letters provide an interested party with all releasable information EPA has regarding a particular piece of property, what that information means, and the likelihood of or current plans for Federal Superfund action. The “comfort” comes from knowing what EPA knows about the property and what its intentions are in terms of a Superfund response.

The accomplishments achieved by this reform can be seen at many sites. As a result of prospective purchaser agreements not only is human health and the environment protected but economic benefits can be seen at the community level. For example, at the Indiana Woodtreating Site near Bloomington, Indiana, the work done under a PPA will prevent contaminants from entering Clear Creek, a tributary of the St. Joseph River, which is a drinking water source for the City of Bloomington, Indiana. Additionally, the purchaser will renovate dilapidated structures on site that are currently accessible to vagrants and vandals. The renovation will create new employment opportunities and an additional property tax base for the local government and school taxing units. At the Osage Metals Site in Wyandotte County, Kansas, the new property owner agreed to reimburse EPA \$80,000 for costs incurred in cleaning up PCB and lead contamination at the site and plans to redevelop the property into a productive business that will generate tax revenue for Kansas City.

All over the country, redevelopment is occurring. Examples of redevelopment include, lead and PCB-contaminated sites becoming retail commercial zones (Prestolite Battery, Vincennes, Indiana), and radioactive soil and debris being capped, allowing the

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construction of a retail hardware store (Denver Radium, Denver, Colorado). EPA's commitment to removing liability barriers may be seen in the increased numbers of agreements. Of the 45 total prospective purchaser agreements reached, 24 (or over 50%) have been concluded since May 1995.

**Next Steps:** Efforts will continue on the development of a broad array of tools to address the concerns parties have regarding potential Superfund liability associated with brownfield properties. The Agency also is creating the "Catalog of Tools for Managing Risk at Contaminated Properties" to identify, describe, and differentiate between the various tools available. The catalog is designed for parties interested in purchasing, developing, leasing, or cleaning up brownfield properties and will specify the situations at which the different tools are applicable and appropriate.

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### **III. COMMUNITY INVOLVEMENT AND OUTREACH**

#### **5a. COMMUNITY ADVISORY GROUPS (CAGs)**

**Description:** EPA is committed to early, direct, and meaningful public involvement in the Superfund cleanup process. One of the ways communities are participating in cleanup decisions at hazardous waste sites around the country is through Community Advisory Groups (CAGs). CAGs are made up of representatives with diverse community interests and provide a public forum for community members to present and discuss their needs and concerns about the decision-making process at sites affecting them.

A CAG is an excellent example of how community involvement can enhance, rather than impede, the Superfund cleanup decision-making process. EPA continues to support the establishment of CAGs (primarily, but not exclusively, for those communities that have sites on the NPL), or the conversion of existing community organizations into EPA CAGs.

**Status:** EPA issued "Guidance for Community Advisory Groups at Superfund Sites" (OSWER Directive #: 9230.0-28, <http://www.epa.gov/swerosps/bf/gdc.htm>) in December 1995, encouraging the use of CAGs at Superfund sites and since that time, they have proven to be an effective mechanism to facilitate the participation of community members. Initially, EPA slated the program to have 10 pilot CAG sites; however, the number of "pilot" sites grew to 16 between the time the program started and when it was officially taken out of the pilot stage. In July 1996 (at the National Community Involvement Conference in Chicago), EPA took the program out of the pilot stage and started accepting

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names of additional CAGs. As of September 1996, the number of CAGs has grown to 23 and a budget is being developed for future support of the CAG program.

EPA has completed a document containing case studies on five CAGs which will be ready for distribution in late November. This document includes case studies of the following hazardous waste sites: 1) The Brio Refining, Inc., Superfund Site in Harris County, Texas; 2) The Carolawn, Inc., Superfund Site in Chester County, South Carolina; 3) The Colorado School of Mines Research Institute Site in Golden, Colorado; 4) The Oronogo-Duenweg Mining Belt Site in Jasper County, Missouri; and 5) The Southern Maryland Wood Treating Superfund Site in Hollywood, Maryland. EPA developed the case studies based on interviews with: community members involved in the CAGs at these sites, EPA personnel, and State and local government personnel involved in the site cleanup efforts.

**Next Steps:** EPA will continue to: evaluate existing CAGs and their impact on community involvement; and identify and develop new tools to promote and assist CAGs. Several fact sheets on the CAG program should be ready for distribution early in FY97.

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## **5b. TECHNICAL ASSISTANCE GRANTS (TAGS)**

**Description:** The Agency is encouraging the Regions to consider means to increase citizen involvement, such as advance funding of TAGs and the authorization of training for TAG recipients. TAGs provide resources to eligible communities affected by Superfund sites to acquire independent technical assistance to help them understand and comment on site-related information. More than 185 TAGs have been awarded since the program's inception in 1988.

**Status:** Increasing citizen involvement through the simplification of the TAG application and administrative processes is underway. The TAG regulation was revised during FY95-96. The revised rule, which the Agency hopes will be promulgated during FY97, contains several simplifying provisions. For example, elimination of the three-year budget period will allow groups to determine their own budget period according to site specific needs. Removal of the 20% administrative cap also provides EPA flexibility in negotiating grants with recipients without being hindered by arbitrary limitations on administrative expenses. An additional facet of this revised rule is that it provides an interpretation of congressional intent regarding the Superfund Amendments Reauthorization Act's (SARA's) "one TAG per site language" such that the rule allows multiple non-concurrent grant recipients.

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**Next Steps:** Preparations are underway to publish the proposed revised rule by June 1997. This revised rule will contain the provisions for limited cash advances. A collaboration between the TAG program and Technical Outreach Services for Communities (TOSC) to devise ways to provide communities with training is underway.

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## **6. COMMUNITY INVOLVEMENT IN THE ENFORCEMENT PROCESS**

**Description:** EPA has identified various opportunities to enhance community participation in the enforcement process at Superfund sites. The Agency is implementing several approaches, including inviting communities to review and comment on draft statements of work and actively disseminating information. EPA is piloting these approaches to observe what impact they may have on Superfund cleanups.

**Status:** Under this reform initiative, EPA identified and tested various approaches to enhancing community involvement in technical settlement issues. The Agency initiated pilot projects at 13 sites in 9 of its 10 Regions. These pilot measures are related to, but distinct from, the steps that the Agency already takes at each site to involve the community whenever it selects a response action or finalizes a settlement agreement (*e.g.*, opportunity for the public to review and comment on proposed cleanup plans or settlements). It also is distinct from, although coordinated with, a separate Superfund reform involving the establishment of CAGs at Superfund sites. This other reform (See Initiative 5 above) is not limited to sites where PRPs are implementing response actions under EPA oversight.

Many of the piloted activities provided opportunities for communities to discuss and review drafts of technical plans known as Statements of Work (SOWs) for sites where PRPs are designing and conducting cleanups. Many of the other projects in this initiative involve giving local citizens an opportunity to discuss and review draft SOWs for Feasibility Studies (FSs), which evaluate possible measures for reducing threats posed by the Superfund sites to human health and the environment. For most, if not all, of these sites, the Regions intend to continue enhanced community involvement measures during the later Remedial Design/Remedial Action (RD/RA) phase of the cleanup. Other pilots in this initiative relate to aspects of the Superfund process other than the FS and RD/RA stages.

For example, two of the projects involve increasing public involvement in removal actions being implemented by PRPs. In addition, at two other pilot sites, EPA facilitated

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communication between the PRPs and local citizens to develop a consensus on future land use. Where consensus is reached, the Agency may propose an appropriate amendment to the cleanup option originally selected by EPA and documented in its ROD. Further, at the Asarco Tacoma Smelter Facility (Commencement Bay, South Tacoma Channel, Washington), Region 10 provided the public with an opportunity to review and comment on various technical documents, including a treatability study prepared by the PRPs for a particular alternative cleanup technology.

**Next Steps:** EPA is evaluating the impacts that enhanced involvement had on both the settlement negotiation process and the studies and cleanups themselves. By examining a variety of measures, the Agency intends to identify those techniques that are most successful in strengthening community participation.

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## **IV. ENVIRONMENTAL JUSTICE**

### **7a. TRAINING AND HEALTH SERVICE ASSISTANCE TO COMMUNITIES**

**Description:** EPA and the U.S. Public Health Service (PHS) established the Medical Assistance Plan (MAP) to respond to the health concerns of under-served citizens living near hazardous waste sites. MAP provides: 1) physician training and placement; 2) medical testing to assess health affects related to hazardous substance exposure; 3) technical assistance to local agencies and health care providers; 4) environmental health education to health care providers; 5) referral services to assist individuals in locating medical specialty clinics or specialists; and 6) medical follow-up for individuals who demonstrate documented exposure to hazardous substances or adverse health conditions related to possible exposures. The Agency will test the MAP program at various Superfund sites.

**Status:** Although EPA targeted four sites for testing the program during FY95, funding was available for only one site, the Del Amo/Montrose site in Torrence, California. At the Del Amo site, EPA's Region 9 office has taken steps to temporarily relocate residents living near the Superfund site.



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**Next Steps:** EPA obligated \$400,000 to continue the Del Amo project in FY96. In addition, EPA and PHS will continue to seek funds sufficient to finance additional pilot projects in FY97.

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## **7b. JOB TRAINING AND DEVELOPMENT**

### **Description:**

- *Minority Worker Training* - The National Institute of Environmental Health Sciences (NIEHS), in cooperation with EPA, is piloting seven minority worker training programs at 11 selected sites nationally. This program will test a range of strategies for recruiting and training young people who live in low-income and minority communities near Superfund sites to work in the environmental field. It prescribes pre-employment training (literacy and life skills), as well as environmental worker training (hazardous waste and asbestos handling, lead abatement, and health and safety training).

EPA is developing a Superfund Jobs Training Initiative (SuperJTI) that focuses on job training for residents living near Superfund sites, particularly in socio-economically disadvantaged communities. Residents who participate in the initiative will gain career skills and be a part of the environmental remediation activities in the neighborhood. The SuperJTI combines extensive classroom instruction and hands-on work experience for each participant. Upon completion of the program, each person will possess marketable skills and become a valuable member of the community's workforce. Classroom instruction and training is an extremely important component of SuperJTI. EPA has partnered with NIEHS to provide such training through the NIEHS Minority Worker Training Program.

- *Environmental Curriculum Development* - Under an EPA grant, the Hazardous Materials Training and Research Institute (HMTRI) will develop environmental work force training programs and conduct national workshops for community colleges located near Superfund and brownfield sites.

**Status:** In general, EPA has created job training and development activities linked to its environmental justice and Brownfields initiatives. Currently, the Agency is facilitating and encouraging local coordinated planning, not only to provide quality worker training, but also to ensure that Brownfields sites hire workers from local job training programs.

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- *Minority Worker Training* - EPA has awarded 20 NIEHS minority worker training grants to facilitate the development of urban minority youth worker training programs.
  - *Environmental Curriculum Development* - EPA is working with the HMTRI to expand environmental training and curriculum development at community colleges located near Brownfields pilot communities. In May and November of 1995, HMTRI hosted workshops at Trident Technical College in Charleston, South Carolina and Catonsville Community College in Maryland to assist community colleges located in Brownfields cities in developing environmental job training programs. A total of 20 Brownfields pilot cities were represented at the workshops. In partnership with EPA, Cuyahoga Community College (Tri-C), located in Cleveland, Ohio established a community business task force to advise the college program on how to develop training programs which will ensure that Cleveland's Brownfields redevelopment efforts will be supported by well trained workers. In the summer of 1995, the City of Bridgeport's Office of Planning and Economic Development hosted an "Environmental Education and Job Training Summit" to share information on Brownfields and to provide a forum for community, government, and business representatives to plan collaborative projects.

**Next Steps:**

- *Minority Worker Training* - EPA plans to continue to work with the NIEHS minority worker training program and hopes to develop additional pilots in brownfield areas.
- *Environmental Curriculum Development* - EPA has chosen two pilot sites: Cuyahoga Community College (Tri-C) in Cleveland, Ohio and Rio Hondo Community College in Whittier, California. HMTRI plans to increase the number of community colleges offering environmental work force training programs over the next year.

**Contact:** Sharon Beard, EPA Region 4, (919) 541-1863

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## V. CONSISTENT PROGRAM IMPLEMENTATION

### 8. GUIDANCE FOR REMEDY SELECTION

**Description:** To improve consistency and to take advantage of streamlining opportunities in site characterization and remedy selection, EPA prepared the following documents: “Soil Screening Guidance,” “Land-Use Directive,” and several Presumptive Remedy Guidances. EPA estimates that these guidances have been implemented at an increasing number of sites, resulting in significant cost and time savings.

**Status:**

- *Soil Screening Guidance* - EPA issued final “Soil Screening Guidance” (OSWER Directive #: 9355.4-17A) on May 17, 1996. The soil screening levels established in the guidance will complement the ongoing SACM initiative and also provide the framework for other cleanup efforts, such as RCRA corrective actions, voluntary cleanup programs, and State/Tribal cleanup programs. Additionally, the development of soil screening levels will be useful in streamlining baseline risk assessment. The “Soil Screening Guidance: User’s Guide,” “Fact Sheet,” and “Technical Background Document” have also been posted on the EPA/Superfund Homepage on the Internet.
- *Land-Use Directive* - On May 25, 1995, EPA issued a new directive entitled, “Land Use in the CERCLA Remedy Selection Process.” (OSWER Directive #: 9355.7-04) This memorandum clarifies that land use should be considered in risk assessment and remedy selection. In addition, it describes how the assumptions about land use should be made by: involving the community, considering the context of the site, and determining the site's potential for reuse. One of the memorandum's important messages is that an assumption of a land use other than residential (*e.g.*, industrial) may be appropriate in remedy selection. The impact of this memorandum will create more remedies tailored to the specific context of sites, better community involvement, and more support for cleanup decisions.
- *Presumptive Remedies* - EPA issued a general presumptive remedy document, “Policy and Procedures,” in September 1993. The Agency published the first Wood Treater presumptive remedy along with presumptive remedies for VOCs in soils and municipal landfills in December 1995. EPA completed the “Ground Water Presumptive Response Strategy” in October 1996. The Agency completed a “User's Guide for VOCs in Soil Presumptive Remedy” (OSWER Directive #: 9355.0-48FS) in July 1996. A final draft of a “User’s Guide to Accompany the

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Wood Treaters Presumptive Remedy” (OSWER Directive #: 9200.5-162) was issued for review and comment in August 1996. Although EPA's primary focus is on the development of new presumptive remedies, it has begun to evaluate existing presumptive remedies.

The Agency has completed a supplemental bulletin which discusses the time and estimated future cost reductions demonstrated by the municipal landfill pilot sites. EPA estimates time savings ranging from 36% to 56%, and future cost reductions up to 60% at the municipal landfill pilots. In addition, the “Municipal Landfill on Military Bases Presumptive Remedy,” (OSWER Directive #: 9355.0-62FS) developed by the Office of Federal Facilities Enforcement, appears to be widely utilized.

EPA is beginning to collect and analyze data on the use of presumptive remedies. For example, Region 9 reports they have nine sites that selected the remedy recommended by the presumptive remedy guidance, or which are in the presumptive remedy process. The EPA Office of Inspector General (OIG) conducted an independent review of the use of presumptive remedies entitled, “Review of Cleanup and Pilot Project at South Indian Bend Wash Superfund Site in Tempe, Arizona.” In the summary of OIG’s major findings, the report concluded: “Use of a *Presumptive Remedy* increased consistency in decision-making by taking advantage of lessons learned at similar sites, and allowed speedup of the Feasibility Study process.” The report acknowledged that the use of “...presumptive remedies is expected to create greater consistency, certainty and quality of remedy decisions in the near term. Time and cost savings are expected to increase over time....”

**Next Steps: *Presumptive Remedies*** - EPA will publish the “Manufactured Gas Plant Presumptive Response Strategy” in February 1997, and the presumptive remedy for PCB sites is expected in April 1997. EPA has been engaged in a dialog with the Department of Agriculture to produce a Grain Storage presumptive remedy that would bridge to the existing VOC and Ground Water presumptive remedies. The Agency is developing a Metals in Soils presumptive remedy in partnership with DOE which should be available in spring 1997. EPA is developing a presumptive remedies supplemental bulletin for future beneficial uses of municipal landfills. The Agency is preparing a supplemental bulletin for dual- or multi-phase extraction (MPE) to assist site managers using the VOCs presumptive remedy. OERR is developing a list to track the universe of presumptive remedy sites. This list will aid in evaluating the time and future cost reductions for presumptive remedies and future supplemental bulletins

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are planned that will document time and future cost reductions, and other benefits associated with the use of presumptive remedies.

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## **9. RISK-SHARING**

### **9a. *Implementing Innovative Technology***

**Description:** To share risks associated with implementing innovative technologies, EPA will agree to share the risks for a limited number of approved projects by “underwriting” the use of certain promising innovative approaches. To encourage PRPs to try new approaches, EPA may agree to share up to 50% of the cost of selected innovative remedies if the remedy fails and subsequent remedial action is required. EPA has already agreed to risk-sharing at one site.

**Status:** Several Regions have identified candidate sites for the risk-sharing initiative. In Region 1, EPA has entered into a risk-sharing agreement with PRPs at the Somersworth Landfill site in New Hampshire. Under the agreement, EPA agreed to pay half the cost of the innovative technology, not to exceed \$3.5 million, if the technology does not fulfill expectations and additional remedial action is necessary. The technology involved, an innovative “funnel and gate,” helps to restore ground water by channeling the flow to a permeable wall containing iron filings. Contaminants are removed as they pass through the gate. If successful, this *in situ* technology may serve as an alternative to costly and protracted “pump and treat” approaches.

**Next Steps:** The Agency is in the process of preparing guidance on implementing the risk-sharing initiative, which is expected by June 1997. Also, given the increased State role in remediation, EPA is developing mechanisms to engage State agencies in this initiative, initially through the Interstate Technology and Regulatory Cooperation Workgroup (ITRC).

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### **9b. *Identifying Obstacles to Using Innovative Technology***

**Description:** EPA will develop programs to share risks associated with implementing innovative technologies by exploring and identifying contractor's concerns with the selection and use of innovative technologies.

**Status:** Following discussions with some members of the Response Action Contractor (RAC) community, EPA learned that the lack of indemnification for prime contractors is hampering the use of innovative technology. Prime contractors are unwilling to recommend innovative technologies for fear that they will be sued for negligence in not recording "tried and tested" technologies. Without indemnification, there is little incentive for the prime contractors to select an innovative technology. Furthermore, a prime contractor may not choose to test an innovative technology if, again, there is a fear of lawsuits if the technology does not perform as expected.

To address the concern regarding indemnification for innovative technologies, EPA is expanding indemnification coverage to include both the prime contractor and the innovative technology contractor when indemnification is offered. Thus, both the technology vendor and the prime will be provided protection from third party negligence claims that may result in a pollution release. A statement on EPA's offering of indemnification is presented in an "Innovative Technology Policy Directive" (OSWER Directive #: 9380.0-25) published by OSWER on April 29, 1996. To date, this protection has not been requested by any vendors or primes.

**Next Steps:** Implementation of this reform is complete.

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## **VI. STATE AND TRIBAL EMPOWERMENT**

### **10. VOLUNTARY CLEANUP PROGRAM**

**Description:** EPA has initiated a joint EPA/State/Tribal effort to define roles in promoting the development and operation of State/Tribal voluntary cleanup programs which are designed to speed the cleanup of non-NPL sites. In addition, the workgroup is examining vehicles for the distribution of any financial support EPA may offer to such programs. Preliminary indications have shown that the States vary in their preferences. Approximately 30 States have voluntary cleanup programs.

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**Status:** Congress appropriated \$10 million of FY97 funding to support State Voluntary Cleanup Program infrastructure. EPA will work with States to develop a mechanism for distribution of this funding. EPA issued a memorandum in November 1996 on an interim approach for Regional relations with State voluntary cleanup programs. This memorandum sets out baseline criteria that will be considered as part of the evaluation of a State or Tribe's application for funding the development or enhancement of a voluntary cleanup program. These criteria will also be discussed as part of a negotiation of a Memorandum of Agreement (MOA) concerning plans for division of labor between EPA and States at sites. Prior to issuance of this memorandum, eight States (Missouri, Michigan, Minnesota, Wisconsin, Illinois, Texas and Colorado) already signed MOAs with their respective Regions concerning how EPA and the States will work together in addressing voluntary cleanup program sites.

**Next Steps:** EPA and the States will assess how the MOA process is working and will seek public comment on and finalize guidance on State voluntary cleanup programs by the end of FY97.

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## **11. INTEGRATED FEDERAL/STATE/TRIBAL SITE MANAGEMENT PROGRAM**

**Description:** EPA and States are working together to develop a pilot program under which States, Territories, Commonwealths, and Federally recognized Tribes would oversee and compel PRP actions at selected NPL-caliber sites. Using knowledge gained from piloting a program to defer certain cleanups to States at 22 sites in seven States, EPA plans to fully develop this program as a model for integrated Federal/State/Tribal site management of NPL-caliber sites. The Agency then will issue new guidance on State deferral procedures.

**Status:** On May 2, 1995, EPA issued final guidance on the deferral program. The deferral program allows EPA to defer from considering listing NPL-caliber sites on the NPL while States and Tribes initiate and oversee PRP responses. The Agency originally expected to evaluate the pilots to determine how to improve the guidance to facilitate greater State empowerment and more effective cleanups.

In addition to implementing the deferral program, EPA Regional Offices worked to increase State participation through innovative site characterization cooperative agreements and new funding for Tribes. Since 1994, a total of eight sites have been formally deferred, while a number of other sites have been informally deferred or are

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under consideration for deferral. Due to the enthusiasm generated for exploring new options for State and Tribal empowerment, other initiatives have generally overtaken the opportunity to fully implement the deferral program.

**Next Steps:** The Agency will continue to implement the deferral program.

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## **12. STATE/TRIBAL SUPERFUND BLOCK FUNDING**

**Description:** EPA currently enters into several types of site- and non-site-specific cooperative agreements with States and Tribes to conduct or assist Superfund response actions. This can be a cumbersome and time-consuming process. To improve the timeliness and effectiveness of the cooperative agreement process, the Agency is working with States and Tribes to identify options and opportunities to consolidate the Superfund award process through block funding.

**Status:** EPA has established a 50-member workgroup on block funding which includes input from 17 States and Tribes. Several States and/or Tribes have expressed an interest in contributing to efforts to develop a block funding mechanism. Ten states and one tribe are currently participating in efforts to pilot the block funding concept. These pilots are in different stages of development. Discussions of successes and impediments to implementation of the pilots are providing useful experience and information which will be used in the development of the final report for this reform.

**Next Steps:** EPA is scheduled to develop a preliminary report documenting obstacles in the award and utilization of Superfund resources and providing recommendations to improve the award and utilization of Fund monies to States and Tribes early in FY97.

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